Interlocutory Order of Injunction
dis'd Mich. — Wh. announced 6.1

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SUPREME COURT OF THE UNITED STATES.

No. ~~249.~~ 149.

THE MILWAUKIE AND MINNESOTA RAILROAD COMPANY, APPELLANTS,

vs.

CHARLES HOWARD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

GOVERNMENT PRINTING OFFICE.

Supreme Court of the United States.

No. 146.

D. MAHONEY, *Intervenor, Appellant in the case of Josefa De Haro, et al,*

vs.

THE UNITED STATES.

Appeal from the District Court of the United States for the Northern District of California.

BRIEF FOR MAHONEY, APPELLANT.

1852. March 16th.—The petition of the heirs of De Haro presented to Land Commission. The land claimed in this petition comprehended all within the exterior boundaries laid down in the diseno of Galindo attached to the expediente. The petition was filed in the Land Commission by Clarke, Taylor & Beckh. Clarke, (p. 144,) of this firm, testifies that they prosecuted to the end of the proceedings "the claim set forth in the petition, and no other."

1853. Feb. 10th.—Letter of Commissioner of General Land Office to Surveyor General of California, directing him as to his duty in view of the fact that the Board of Land Commissioners "decline to issue any more orders, on the application of the parties, for preliminary surveys," (168.)

1853. June 10th.—Clarke, Taylor & Beckh apply to U. S. Surveyor General, stating that the Land Commission has refused to order an initiatory survey of the De Haro claim, and requesting that "such survey may be made under his official authority and direction." Clarke (of Clarke,

Taylor & Beckh) testifies (p. 144) that the firm was employed by De Zaldo, administrator of De Haro's estate, to prosecute the claim, and "never had any business conference with the heirs and children of De Haro in reference to the management of the case." He adds, that the above letter to the U. S. Surveyor General "must have been written in pursuance of instructions from De Zaldo."

1853. July 9th.—Leander Ransom, chief clerk in Surveyor General's Office, makes a survey of the Rancho Laguna de la Merced, (p. 36.) The interest Ransom had in this survey, and his collusion with Ramon de Zaldo and Felix Argenti to defraud the De Haro heirs, are established by the paper found by Conway, his successor, in his desk, (pp. 125, 127, 128.) Ransom admits (p. 151) that this paper was "*intended as a memorandum for Argenti to sign;*" *vide* also Conway's depositions (pp. 162, 224) and Argenti's declaration to Denniston (p. 175.)

1853. Aug. 12.—Felix Argenti, the partner of Ransom and De Zaldo, lays school warrants on the land outside of the Ransom survey and within the exterior boundaries of the De Haro claim, to the extent of sixteen hundred acres, *vide* deposition of W. Bartlett and Exhibit appended thereto, page 183.

1853. November.—The sixteen hundred acres on which Argenti had laid his school warrants are advertised for sale at auction, (p. 133.) The heirs of De Haro publish a warning to purchasers not to buy, as the land is theirs and the sale unauthorized by them. For this notice *vide* p. 134. This stopped the sale. See affidavits of Denniston (p. 131) and Brown (p. 132,) and their depositions, (pp. 174–199.)

1854. June 24.—Ransom survey filed in Land Commission, (41.)

1854. June 29.—Adjoining lands within exterior limits of the De Haro grant sectionized, returned and certified by Surveyor General. For the illegality of this proceeding see instructions of General Land Office to Surveyor General of California, (p. 125.) For its novelty and singularity, *vide* depositions of Conway (p. 225) and official letter of Surveyor General Mandeville to General Land Office, (p. 126.)

1854. July 10.—Horace Hawes employed by De Zaldo and the heirs of De Haro to advocate their cause before the Land Commission and the District Court, *vide* Hawes' *written* contracts with De Zaldo and the heirs, pp. 137, 138. Hawes (p. 136) states that he "repudiated" the Ransom survey and plat "on hearing of the cause as being irregularly on file and inadmissible as evidence." See also Hawes' deposition, (p. 129–130,) in which he states that he was employed by the heirs to advocate their claim to the whole tract, and did so, and that the heirs insisted steadily on their right to the whole of it, and made no election of any specific half league. *Vide* also depositions of heirs themselves, (pp. 174, 190, 193, 197, 199.)

1855. July 24.—Claim confirmed by Land Commission, (p. 41.) The Ransom map is not noticed either in the opinion or the decree of the board, but, on the contrary, the heirs are left to elect their half league within the exterior boundaries, subject only to the condition that respect be had in the survey to the occupation of Galindo and De Haro. The only map referred to in the decree is "the map contained in the expediente."

1858. January 13.—Claim confirmed by District Court, and land described in the decree precisely as in that of Land Commission, with the exception that in the former it is stated to be in San Francisco county, (p. 44.)

1858. March 19.—Order vacating appeal by United States.

1859. November 22.—Plat of survey filed in District Court, (p. 46.)

1859. December 6.—Exceptions to survey filed by United States, (p. 46.)

1860. October 3.—Objections to survey filed by United States, (p. 48.)

1862. March 26.—Objections of D. Mahoney to survey, (p. 80.)

1862. June 13.—Opinion rejecting survey and decree ordering another one, (pp. 120–122.)

1862. June 30.—Petition of claimants for a re-hearing with affidavits annexed, (p. 123.)

1862. July 16.—Re-hearing granted, (p. 134.)

1863. May 30.—Opinion modifying survey, (253.)

1863. June 3.—Order to modify survey, (257.)

1863. June 19.—Plat of new survey returned, (258.)

1863. June 22.—Exceptions to survey filed by United States, (258.)

1863. June 29.—Exceptions to survey filed by Mahoney, (258.)

1863. July 25.—Opinion approving survey of June 19 and making it final, (259.)

1863. October 12.—Appeal granted United States
1863. October 17.—Appeal granted claimants.

All parties object to the survey and have appealed from the decree of the Court approving it. On the part of the appellant, in 146, it is contended that the case should be sent back with a mandate which will give to him the right which has heretofore been denied him; namely, that of electing his own location.

J. S. BLACK,

Counsel for Appellant, Mahoney.

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SUPREME COURT OF THE UNITED STATES.

No. 243.

THE MILWAUKIE AND MINNESOTA RAILROAD COMPANY, APPELLANTS,

vs.

CHARLES HOWARD.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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1 Circuit court of the United States of America for the ninth circuit and district of Wisconsin.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the ninth circuit and district of Wisconsin, began and held, according to law, on the third Monday (being the eighteenth day) of April, A. D. 1864, at the city of Milwaukee, in said district of Wisconsin, present and presiding the honorable Samuel F. Miller, associate justice of the Supreme Court of the United States, assigned to said circuit, and the honorable Andrew G. Miller, district judge, Darius C. Jackson, marshal, and Ascott Sloan, clerk, the following proceedings were had, to wit:

CHARLES HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD and SELAH CHAMBERLAIN. } In equity.

Be it remembered that heretofore, to wit, on the 5th day of January, A. D. 1860, in the district court of the United States for the district of Wisconsin, came Sebre Howard, complainant, by Levi Hubbell, esq., his solicitor, and exhibited and filed his bill of complaint in said district court as follows:

Bill of complaint.

UNITED STATES DISTRICT COURT, *Wisconsin District:*

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and SELAH CHAMBERLAIN.

2 To the honorable A. G. Miller, judge of the district court of the United States for the district of Wisconsin:

Sebre Howard, of Elyria, in the State of Ohio, and a citizen of the State of Ohio, brings this his bill against the La Crosse and Milwaukee Railroad Company, a corporate body, duly incorporated and organized under the laws of the State of Wisconsin, and having its principal office of business in the city of Milwaukee, in Wisconsin, and Selah Chamberlain, a citizen of said State of Wisconsin.

And thereupon your orator complains and says, that heretofore, to wit, on the 28th day of November, 1859, in this court, before the judge thereof, by the consideration and judgment of said court, your orator recovered against the said defendant, the La Crosse and Milwaukee Railroad Company, a judgment for the sum of sixteen thousand three hundred and fifty-eight dollars and four cents damages, and twenty-one dollars and 82 cents costs of said suit, for certain causes, in favor of your orator and against the said company, defendant, which judgment was then and there duly entered and docketed, whereof the said company, defendant, was convicted, as by the record of said judgment remaining in the office of the clerk of the said district court, in said city of Milwaukee, will more fully appear, and to which, for greater certainty, your orator prays leave to refer. That said judgment remaining in full force, your orator on the 9th day of December, 1859, issued an execution on said judgment, in due form of law, against the property of

said company, defendant, directed to the marshal of said district of Wisconsin, duly signed by the attorney of your orator, intelligibly referring to said judgment, stating the court and place where said judgment was docketed, the names of the parties to said judgment, and the amount thereof; the of docketing said judgment, and the amount due thereon; and requiring the said marshal substantially to satisfy the said judgment out 3 of the personal property of the said company, and if sufficient personal property could not be found, then out of the real property belonging to said company on the day when said judgment was docketed in said court, or at any time thereafter, which execution was returnable on the first Monday in January, 1860; that said execution was, on the day and year when the same was issued as aforesaid, delivered to the marshal of said district to serve, execute, satisfy, and return, according to law.

That afterwards, to wit, on the first Monday of January, A. D. 1860, the said marshal returned in writing to the clerk of said district court, on the said execution to him in that behalf directed and delivered as aforesaid, that he could find no property whereon to make and satisfy the amount of said judgment, or any part thereof, and therefore returned said execution unsatisfied, then and there, as by the said execution and return aforesaid, thereon endorsed, and now on file in the office of said clerk of this court, more fully appears, and to which your orator prays leave to refer should it be necessary so to do.

And your orator further states and shows to your honor, that he is informed and believes, and therefore says, that there is now legally and equitably due and unpaid on said judgment to your orator the sum of sixteen thousand three hundred and seventy-nine dollars and eighty-six cents, and interest thereon from said 28th day of November, A. D. 1859, over and above all just claims of said company by way of offset payment or otherwise; and that said judgment remains in full force uncancelled, unreversed, and unsatisfied.

Your orator farther states and shows to your honor, that the said La Crosse and Milwaukee Railroad Company, defendant, at Milwaukee, in said county of Milwaukee, on the 26th day of September, A. D. 1857, designing and intending to swindle, delay, cheat, and defraud its creditors, did pretend to make, and in form did make, seal, execute, and deliver to said Selah Chamberlain, defendant, a pretended lease or conveyance in writing, in and by which lease or conveyance in writing, dated the day and year last aforesaid, 4 the said company, defendant, pretended to, and did express that it, said company, did sell and convey to said Selah all its personal property of every kind and description in the State of Wisconsin, except all such personal property as was then used in and appurtenant to the operation of what is called and known as the Watertown division of the La Crosse and Milwaukee railroad; and did pretend to, and in said lease or conveyance in writing did express that it, said company, did let and lease to said Selah, from and after the 30th day of September, 1857, for an indefinite term of time, to be determined in the manner thereinafter specified, its, said company's, entire railroad and railroad route from the city of Milwaukee, by way of Honicon and Portage city, to the city of La Crosse, together with its, said company's, right of way, depot grounds, and all buildings, tenements, and fixtures, of whatever kind or description, connected therewith or appurtenant thereto, together with all the estate, rights, privileges, and appurtenances and franchises connected therewith or belonging or incident thereto, subject to such prior or superior liens as might or did exist thereon; and all its existing contracts and agreements with any other company whose railroad connects with the La Crosse and Milwaukee rail-

road; said lease or conveyance, in writing, was made and entered into by and between the said La Crosse and Milwaukee railroad, as party of the first part, and the said Selah Chamberlain as party of the second part, and contained stipulations, covenants, and agreements, among other things, substantially as follows—that is to say:

"It is mutually agreed that the said party of the second part shall, from and after the said 30th day of September, and until this agreement shall be terminated, in the manner herein provided, operate so much of said railroad as is ready for operation, and from time to time such portions of the same as shall be made ready for operation, in such manner as will produce the largest amount of net receipts; that the said party of the second part shall, during the term aforesaid, keep the said road and all the rolling stock upon the same in good and thorough repair; and that the said party of the second part shall receive and appropriate, in the manner hereinafter provided, all the receipts or income to be derived from the operation of said railroad. It is further mutually agreed that the said party of the second part may, if it shall be found for the interest of said company, buy additional rolling stock, and appropriate the receipts of said railroad to the payment of the same.

"The said party of the second part hereby undertakes and agrees that he will defray all the current costs and expenses of keeping said railroad and rolling stock in good and thorough repair, and all the costs and expenses of operating the said railroad, and that he will, by the fifteenth day of every month, make out and deliver to said party of the first part a correct statement, exhibiting the total receipts and income of said railroad from all sources during the next preceding month, also the cost and expenses, during such month, of rolling stock purchased, and of keeping said railroad and rolling stock in repair, and the cost and expense of operating said railroad, and also exhibiting the net receipts from said railroad, after deducting such cost and expenses of rolling stock and repairs, and of operating, and that he will, at any time, on demand of said company or its president or secretary, furnish to the person demanding the same, a statement in detail of the items of which said statement is composed; and any officer or agent of said company, authorized by said company to do so, shall, at any time, have the right to examine the accounts of said party of the second part, relating to the repairs of said railroad and rolling stock, and to the operating of said railroad.

"And the said party of the second part further undertakes and agrees that the said net receipts, after deducting the cost and expenses of repairs and operating as exhibited by the said monthly statement, as aforesaid, shall be appropriated by him in the manner following, to wit:

"1. To the payment of all coupons hereafter to become due upon nine hundred and fifty thousand dollars of the bonds of said company secured by a first mortgage or deed of trust of said railroad from Milwaukee to Portage city, bearing date June 13th, A. D. 1854, together with the sinking fund provided for by a supplemental mortgage or deed of trust bearing date February 6th, 1856, except such of said coupons as are payable November 1st, 1857.

"2. To the payment of all coupons hereafter to become due on one hundred and fourteen thousand dollars of bonds of the city of Milwaukee issued to the Milwaukee, Fond du Lac and Green Bay Railroad Company, secured by a second mortgage or deed of trust on a part of said railroad, which mortgage or deed of trust bears date on the first day of September, A. D. 1853.

"3. To the payment of all coupons hereafter to become due on two hundred thousand dollars of bonds of the city of Milwaukee issued to the La Crosse and Milwaukee Railroad Company, secured by a second mortgage or deed of

trust on a part of said railroad, which mortgage or deed of trust bears date the thirtieth day of July, A. D. 1854.

"4. To the payment of all coupons hereafter to become due on one million of dollars of the bonds of the said railroad company secured by mortgage or deed of trust on the railroad of said company from Milwaukee to Portage city, and from Watertown to Midland, bearing date the day of , A. D. 1857.

"5. Whatever balance of said net receipts as aforesaid shall remain after the payment of the said coupons and sinking fund, shall be applied by said party of the second part in the payment of the amount due or hereafter to become due to him by virtue either of a certain contract between said parties dated January 20th, 1857, a supplemental contract between said parties,
dated April 30th, 1857, or a certain contract between said parties,
7 dated November 20th, 1856, or of a contract modifying said contract
entered into between the said parties simultaneously with this contract, except such as may become due for work which shall be hereafter due between New Lisbon and La Crosse, which is to be paid for from the means of said company other than the said income.

"And the said party of the second part further undertakes and agrees, that whenever he shall have received from the earnings of the said railroad such sum as by the terms and conditions of the aforesaid contracts for the construction of the said railroad, bearing date, respectively, November 20th, 1856, January 20th, 1857, April 30th, 1857, and the one entered into simultaneously herewith, he is or shall be entitled to receive, or whenever at any time the said party of the first part shall pay to him any balance which at such time he shall be entitled to receive according to the terms and conditions of the said contracts, that he will surrender up to the said party of the first part, the quiet and peaceable possession of the whole and every part of the said railroad, together with its right of way, depot grounds, and all buildings, tenements, and fixtures of whatsoever kind or description connected therewith, or appertaining thereto, in good repair, together with all estate, rights, privileges, franchises and appurtenances connected therewith or belonging or incident thereto, including all the railroad buildings, tenements, fixtures and appurtenances constructed, and all rolling stock and other personal property put upon said road by said party of the second part by virtue of this contract, and that he will reconvey and deliver to said party of the first part all personal property hereby conveyed, which shall not have been worn out, destroyed or consumed in the construction or operation of the
said railroad, and that he will convey and deliver to said party of
8 the first part all personal property which shall have been acquired
for said railroad in pursuance of this contract, or with the means derived from the receipts of said road, and that he will at such time deliver on the line of said railroad to said party of the first part fifteen thousand cords of wood, and that whenever the said party of the second part shall have received, as aforesaid, such sum as he shall be entitled to as aforesaid, or whenever such balance shall be paid as aforesaid, this contract shall cease and determine, and from thenceforth it shall be null and void."

Your orator further states and shows to your honor, that after the making and delivery of said Selah of the said pretended lease, or conveyance in writing, to wit, on the day of the date thereof, the said Selah entered into possession of all the property, rights, privileges, and franchises, described, enumerated and mentioned in said lease, and ever since has taken and received, and is now taking and receiving, all tolls and profits, income and revenue of said company, defendants, said railroad and other property described in said lease or conveyance in writing; and your orator is advised, informed and believes, that said company, defendant, had no lawful authority

to make said lease or conveyance in writing to said Selah, and that the same is therefore wholly void in law; and that the said company defendant, being, at the time of the making and delivery of the said lease or conveyance in writing, largely indebted to your orator and other persons, and greatly embarrassed, and unable to carry on the construction of its railroad, made said lease or conveyance to said Selah, as the said Selah then well knew, with the intent, design and purpose to hinder, delay, and keep off its said creditors, while, through the agency of the said Selah as its pretended lessee,
9 it could accomplish the completion of its said railroad and prevent the attachment of its property and the interruption of its business it then expected from its creditors, and the said lease or conveyance in writing was made, executed and delivered to the said Selah at the day of its said date, and with the intent and design on the part of said company of hindering, delaying, and defrauding its said creditors thereby, as the said Selah well knew; and the said Selah, fraudulently designing and intending to aid said company, defendant, in thus hindering, delaying and defrauding its creditors, entered into and accepted said lease or conveyance in writing from said company, and that said lease or conveyance in writing is therefore void in law and of no effect as against your orator, a creditor of said company; and your orator is further advised and states, that said lease or conveyance in writing does hinder and delay creditors of said company unreasonably in the enforcement and collection of their rights, debts, and damages against said company, and create trusts for the benefit of said company to an unlimited amount, and that the same is therefore void in law as against your orator, a creditor of said company, without regard to the intention and design of said parties to the said lease or conveyance in writing; and your orator further states, that the debt on which his said judgment was obtained was created and owing by said company to your orator a long time prior to the time when said lease was executed as aforesaid.

And your orator is informed and believes that the said Selah has received under said pretended lease of the tolls, income, and revenues of said railroad a great sum of money, more than sufficient to satisfy your orator's
10 said judgment which he now holds in fraud of said company's creditors, and that the same ought to be applied to the payment and satisfaction of said judgment of your orator, and that said lease and said judgment, so as aforesaid executed and confessed to said Chamberlain, are in form and constitute encumbrances upon the property described in said lease, and are a cloud upon and impediment to the right of your orator to levy his said execution and satisfy his said judgment thereon.

Your orator further shows, that in this the district court of the United States for the district of Wisconsin in said district, on the 2d day of October, 1857, or about that time, the said company, defendant, further designing and intending to injure, delay, hinder, and defraud its creditors of the enforcement and collection of their rights, debts and damages against it, and to aid, brace up, and to give additional color to the right of the said Chamberlain, under said pretended lease or conveyance in writing, and thus enable the said Chamberlain more successfully and certainly to aid the said company in its fraudulent design and purpose of hindering, delaying and defrauding its creditors, as aforesaid, did confess to said Selah, and suffer to pass against it, a judgment in his favor and against said company, defendant, for the sum of six hundred and twenty-nine thousand and eighty-nine dollars and seventy-two cents damages, and fifteen dollars and fifty cents costs, in all for the sum of six hundred and twenty-nine thousand one hundred and five dollars and twenty-two cents; which said judgment, fraudulently confessed and suffered as aforesaid, was in form regularly docketed in said court on the day and year last aforesaid; and that the said Selah sought

11 said judgment to aid him in his possession and claim of right under said lease or conveyance in writing, before then known by him to be fraudulent as aforesaid; and that he well knew, when said judgment was confessed and suffered as aforesaid, that the said company designed thereby to defraud, hinder, and delay its creditors, and particularly Vose, Livingstone and Company, of a right against said company, defendant; and that said judgment is for these reasons void in law as against your orator, who is a creditor of said company, defendant.

And your orator further shows, on information and belief, that said Selah has pretended to apply a large sum of money, to wit, over twenty thousand dollars received by him under said fraudulent lease or conveyance in writing from the income, revenue and earnings of said railroad and other property, in part satisfaction and payment of said fraudulent judgment; and your orator further shows, on information and belief, that when said judgment was so confessed and suffered as aforesaid, the said company was not indebted to said Chamberlain in any sum exceeding two hundred thousand dollars, and the said judgment is therefore fraudulent and void; and that soon after the docketing of said judgment in favor of said Selah, he, the said Selah, sued out a writ of fieri facias according to the practice of the said district court in due form of law, directed to the marshal of the district of Wisconsin, and caused the same to be levied upon railroad iron of value sufficient to satisfy said execution, belonging to said railroad company, and after such levy said Selah, by his agents and servants, took away said railroad iron, so levied upon, from the custody of said marshal, privately, and laid the

12 same, or a great part thereof, down upon the said company's said railroad, and that the said judgment was confessed to be used as a cloak and cover to insure the laying down of said iron as aforesaid, for the benefit of said company, defendant, and is therefore null and void as against your orator, who is a creditor of said company, defendant.

And your orator further shows, on information and belief, that there are mortgages on said railroad, and appurtenances and franchises of said company, about to be foreclosed, which will extinguish the interest of said company in said railroad, appurtenances and franchise, and that the toll and income and revenue of said railroad from this time until said foreclosure shall take place are the only means in the direct control of said company, defendant, to which your orator can look to satisfy said judgment in his favor against said company, and that unless a receiver be appointed by this court, of the receipts, revenue and income of the road, immediately and pending this action, the said foreclosure will be consummated and your orator be entirely unable to obtain satisfaction of his said judgment out of said revenues, tolls and income. And your orator is fearful that the said Chamberlain and the said company will make way with the rents, income and profits arising from the use and operation of the said railroad, its fixtures, rolling stock and other personal property, so as aforesaid transferred to the said Chamberlain, or purchased by him with the money and means of the said company, and will place the same beyond the control of this court, or a court of law, unless restrained from so doing by an injunction from this court.

13 And your orator further shows unto your honor, that this bill of complaint is not exhibited by collusion with the said railroad company, defendant, or for the purpose of protecting the property and effects of the said company, or any part thereof, against the claims of other creditors, but for the sole purpose of removing the aforesaid fraudulent lien and claim of the said Chamberlain, defendant, and compelling payment and satisfaction of the money due upon the aforesaid judgment.

To the end, therefore, that the said La Crosse and Milwaukee Railroad

Company, and Selah Chamberlain, may respectively full, true, direct and perfect answer make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were here again repeated, and they thereto particularly interrogated, according to the best of their respective knowledge, information and belief, without oath, (your orator hereby waiving, pursuant to the statute, the necessity of the answer of such defendants or of either of them being put in under oath,) and that a receiver of the money, property and things in action of the said railroad company, defendant, with the usual powers, duties and authority, may be appointed by this honorable court, and that the said railroad company, defendant, may be directed to assign, transfer, and deliver to the said receiver, under the direction of a master of this court, all its railroad, track, fixtures, depots, depot grounds, property, equitable interest, things in action, money and effects, and all the books and papers relating thereto, and the evidence thereof; and that the said lease or conveyance in writing, hereinbefore mentioned, from said company, defendant, to said Chamberlain, defendant, and the said judgment confessed and suffered, by the said
14 company, defendant, in the said district court, on the second day of October, 1857, hereinbefore described, in favor of said Chamberlain, against said railroad company, defendant, may each and both be declared and adjudged, by this honorable court, to be fraudulent and void, as to and against the creditors of said railroad company, and as to your orator; and that the said Chamberlain may account for all moneys at any time received by him under said lease, of the income, revenues, profits or tolls of said railroad and other property described in said pretended lease, whether applied by him on his said judgment against the said company or not, and that he may pay the same to the receiver in this action; and that the same may be applied to the satisfaction of your orator's said judgment, or that your orator may have personal judgment against him therefor; and that the said Chamberlain, defendant, may, by a writ of injunction out of this court, be enjoined and restrained from claiming, setting up, pretending or exercising any right under said lease or conveyance in writing to him, hereinbefore mentioned, or under said judgment confessed and suffered as aforesaid, or from intermeddling with the said company defendant's said railroad, fixtures, property and appurtenances, or exercising any of the franchises mentioned and described in said lease or conveyance in writing from said company to him hereinbefore mentioned, and that the said Chamberlain may be perpetually enjoined from setting up or pretending any claim or right under said lease or conveyance in writing, and said judgment confessed and suffered as aforesaid, and from intermeddling with or exercising any of the rights, franchises or privileges of said company mentioned in said pretended lease or conveyance in writing; or that your orator may have such further or such other relief as the nature of his case may require, and shall be agreeable to
15 equity and good conscience.

May it please your honor to grant unto your orator a writ of injunction, to be issued out of and under the seal of this honorable court, directed to the said Selah Chamberlain, defendant, and to his attorneys, counsellors, solicitors, agents and trustees and servants, therein and thereby, under a certain penalty in the said writ to be expressed, commanding and enjoining them and each of them in manner as aforesaid until the further order of this honorable court.

May it please you honor, also, to grant unto your orator a writ of subpœna, issued out of and under the seal of this honorable court, to be directed to the said La Crosse & Milwaukee Railroad Company and the said Selah Chamberlain, commanding each of them, by a certain day, and under a certain penalty therein to be inserted, personally to be and appear before this

honorable court, then and there to answer all and singular the premises, and to stand to, abide by, and perform such order and decree therein as to your honor shall seem agreeable to equity and good conscience.

And your orator will ever pray, &c.

LEVI HUBBELL,
Complainant's Sol'r.
LEVI HUBBELL,
of Counsel.
SEBRE HOWARD.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

Personally appeared before me, on this 3d day of January, 1860, Sebre Howard, who, being by me duly sworn, did depose and say, that he is the above named complainant, that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowedge, except as to those matters which are therein stated to be on the in-
16 formation and belief of the complainant, and as to those matters he believes it to be true.

J. M. MILLER,
Clerk & U. S. Commissioner, Wisconsin.

Rule for injunction and receiver.

And thereupon, and upon the same day, came the said complainants and entered in the order and rule book an order that the said defendants show cause by Monday, the sixteenth day of January instant, at 10 o'clock in the forenoon, why an injunction should not be issued and a receiver be appointed according to the prayer of the said bill of complaint; whereupon a subpœna issued, returnable the first Monday of February, as follows, to wit:

17 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

{Seal of Dist. court U. S.} The President of the United States to the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, greeting:

You are hereby commanded, that you personally appear before the judge of the district court of the United States of America for the district of Wisconsin, in our court of chancery in and for the district aforesaid, on the first Monday of February next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our said court, by Sebre Howard; and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded to serve the same upon the said the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, if to be found in his district, and due return thereof make.

Witness the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the said district, this fifth day of January, in the year of our Lord one thousand eight hundred and sixty, and of our independence the eighty-fourth.

J. M. MILLER, *Clerk.*
LEVI HUBBELL, *Solicitor.*

It is ordered by our said court, that the said the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, the defendants aforesaid, do enter their appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returable, as aforesaid, otherwise the bill filed may be taken as confessed. And it is further ordered that they show cause by Monday, the sixteenth day of January instant, at ten o'clock in the forenoon, why an injunction should not be issued, and a receiver be appointed, according to the prayer of the bill on file.

18 *Return.*

And afterwards, and on or before the return day of said subpœna, came the said marshal, and returned the same with his return indorsed in writing thereon, as follows:

Served on the within named the Milwaukee and La Crosse Railroad Company, by delivering a copy of this subpœna personally to Newcomb Cleveland, president of said company, this 18th day of January, 1860. The within named Selah Chamberlain not found.

J. H. LEWIS, *Marshal.*
By T. HENRY, *Dep.*

Marshal's fees:	Service....	$2 00
	Travel	06
	Copy.....	40
		$2 46

Filed Feb'y 6, 1860.

And afterwards, to wit, on the 19th day of March, A. D. 1860, came the complainant, by his solicitor, and filed his præcipe for an alias subpœna, and entered in the order and rule book an order that the defendant, Selah Chamberlain, show cause by Monday, the ninth day of April next, at ten o'clock in the forenoon, why an injunction should not be issued and a receiver be appointed, according to the prayer of the bill on file. Whereupon an alias subpœna issued, returnable the first Monday of May next ensuing, as follows:

19 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

{Seal of Dist. court U. S.} The President of the United States to the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, greeting:

You are hereby commanded, that you personally appear before the judge of the district court of the United States of America for the district of Wisconsin, in our court of chancery in and for the district aforesaid, on the first Monday of May next ensuing, at Milwaukee, to answer to a bill of complaint exhibited against you in our said court, by Sebre Howard; and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty which may ensue.

This process of subpœna is directed to the marshal of this district, who is hereby commanded, as heretofore commanded, to serve the same upon the said the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, if to be found in his district, and due return thereof make.

Witness the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin, at the city of Milwaukee, in the

said district, this nineteenth day of March, in the year of our Lord one thousand eight hundred and sixty, and of our independence the eighty-fourth.

J. M. MILLER, *Clerk.*
LEVI HUBBELL, *Solicitor.*

It is ordered by our said court, that the said the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, the defendant aforesaid, do enter their appearance in this suit, in the clerk's office, on or before the day and time at which this subpœna is returnable, as aforesaid, otherwise the bill filed may be taken as confessed. And it is further ordered that the defendant, Selah Chamberlain, show cause by Monday, the ninth day of April next, at ten o'clock in the forenoon, why an injunction should not be issued, and a receiver be appointed, according to the prayer of the bill on file.

20 *Return.*

And afterwards, and on or before the return day of said alias subpœna, came the said marshal, and returned the same with his return indorsed in writing thereon, as follows:

Served on the within named Selah Chamberlain, by delivering to him personally a copy of this subpœna this 19th day of March, 1860.

JEHU H. LEWIS, *Marshal.*

Fees, $2 46.

Filed March 22, 1860.

21 And afterwards, to wit, on the seventh day of May, 1860, came the defendant, Selah Chamberlain, by his counsel, and his motion it is ordered by the court that the time for filing an answer be and is hereby extended to the first Monday of June next.

And afterwards, to wit, on the ninth day of June, 1860, came the parties, by their counsel, and the rule of the complainant for an injunction and for the appointment of a receiver having been argued on the bill, records, and affidavits submitted, on consideration whereof it is ordered by the court that an injunction be and hereby is allowed, according to the prayer of the bill, until the further order of this court.

Receiver.

And same day, (9 June, 1860,) the motion and rule of the complainant for the appointment of a receiver came on to be heard, and was argued by Mr. Hubbell and Mr. Carpenter for the complainant, and by Mr. Emerson for the defendant, Selah Chamberlain, the defendant. The La Crosse and Milwaukee Railroad Company not appearing, on consideration wherof it is ordered by the court that Hans Crocker be and he is hereby appointed receiver of all the railroad of the said La Crosse and Milwaukee Railroad Company, being all the line of railroad extending from the city of Milwaukee to the city of La Crosse, in the State of Wisconsin, together with all the depots, depot buildings, tracks, side-tracks, engine-houses, buildings, fixtures, fences, locomotives, engines, cars, furniture, tools, rolling stock, rights, privileges, and franchises, and all other personal and real property belonging to the said railroad company, and belonging to or used or connected with said line of said road, (subject nevertheless to a previous order of court appointing him, the said Hans Crocker, to be receiver for the western portion of said road, from Portage city to La Crosse,) and be at once put into possession of the same, and every part and parcel thereof.

And it is further ordered that the said Hans Crocker, before entering upon his duties as such receiver, shall give a bond with sureties, to be approved by the judge of this court, in the penal sum of fifty thousand dollars, conditioned that he will duly manage and conduct said railroad and property, and for what he shall receive shall duly file inventories, and also file, under oath, every month, accounts of his receipts and disbursements, according to the rules and practice and directions of this court.

22

And it is further ordered that the defendants, and particularly the defendant Selah Chamberlain, deliver over to the said Hans Crocker, as such receiver, all and singular the said railroad, from Milwaukee to La Crosse, and all other the real estate and premises before mentioned, and all and singular the rolling stock, locomotives, cars, machinery, tools, fixtures, money, furniture, and appurtenances, and other personal property, which belongs or has been procured for or used in connection with said railroad, or any part thereof, which may have come to the hands of the said defendants, or over which they have control, and that such receiver take possession thereof, and take directly, or by such agent as may be for that purpose by such receiver duly appointed, the care, possession, management, direction, and control of all such property, and all the income to be had and received from the running, possession, and operation, or use of the said railroad and property, in anywise, and out of the same pay the expenses of the said receivership, and the costs and expenses of operating and maintaining, or preserving and keeping said railroad and other property and premises to be received by him as aforesaid, and then hold the balance of such money and receipts subject to the further order of this court.

And it is further ordered that the said receiver, and any other party in interest in this suit, have leave, from time to time, to apply to this court for such further directions in respect to such property, and the management and proceeds thereof, as may be just and may be required.

23

Bond of receiver.

And same day bond of said Hans Crocker, as receiver, approved and filed, which is as follows:

Know all men by these presents that we, Hans Crocker, Alexander Mitchell, and James H. Rogers, all of the city of Milwaukee, in the State of Wisconsin, are held and firmly bound unto the United States of America, for the use of all whom it may concern, in the penal sum of fifty thousand dollars, lawful money of the United States of America, to be paid to the said obligee; for which payment, well and truly to be made, we, and each of us, bind ourselves respectively, and our respective heirs, executors, and administrators, firmly, by these presents. Sealed with our seals, and dated the ninth day of June, A. D. 1860.

Whereas, by an order of the district court of the United States for the district of Wisconsin, in equity, bearing date the ninth day of June, 1860, made in a cause pending therein, wherein Sebre Howard is complainant, and the La Crosse and Milwaukee Railroad Company and Selah Chamberlain are defendants, the said Hans Crocker was duly appointed the receiver of all and singular the railroad of the La Crosse and Milwaukee Railroad Company, being all the line of railroad extending from the city of Milwaukee to the city of La Crosse, in the State of Wisconsin, together with all the depots, depot buildings, tracks, side-tracks, engine-houses, buildings, fixtures, fences, locomotive engines, cars, furniture, tools, rolling stock, rights, privileges, and franchises, and all other personal and real property belonging to the said railroad company, and belonging to or used or con-

nected with said line of railroad; subject, nevertheless, to a previous order of said court, appointing him, the said Hans Crocker, to be the receiver for the western portion of said road, from Portage city to La Crosse:

24 Now, therefore, the condition of this obligation is such, that if the above bounden, Hans Crocker, shall and do, under the rules and practice of said court, duly file his inventory, and monthly, and oftener if thereunto required, duly account for what he shall have received or had in charge as receiver in the said cause, and pay and apply what he shall receive or have in charge, as he may from time to time be ordered or directed by said court, and do and perform his office of receiver, in all things, according to the true intent and meaning of the aforesaid order this day made, then this recognizance to be void; otherwise in full force and virtue.

H CROCKER. [SEAL.]
A'X MITCHELL. [SEAL.]
JAS. H. ROGERS. [SEAL.]

In presence of—
LEVI HUBBELL.

JUNE 9, 1860.

This bond and sureties approved.

A. G. MILLER, *Judge.*

Filed June 9, 1860.

Pro confesso.

And afterwards, to wit, on the thirteenth day of June, A. D. 1860, came the complainant, by his counsel, and it appearing to the court that the time limited by the order of the court, heretofore made, for the filing of the answer of the defendant, Selah Chamberlain, has expired, and no answer having been filed, it is ordered by the court that this bill be, and hereby is, taken as confessed as to the said defendant, Selah Chamberlain.

And afterwards, to wit, on the eighteenth day of June, A. D. 1860, came the defendant, Selah Chamberlain, by his solicitors, Messrs. Emmons, Van Dyke and Hamilton, and filed his answer, as follows:

25 *Answer Selah Chamberlain.*

The district court of the United States for the district of Wisconsin.—In equity.

The separate answer of Selah Chamberlain, one of the defendants, to the bill of complaint of Sebre Howard against this defendant and the La Crosse and Milwaukee Railroad Company.

This defendant, now and at all times saving and reserving unto himself all benefit of exception to the many errors and imperfections in the said bill of complaint contained, for answer thereunto, or unto so much thereof as he is advised it is material or necessary for him to make answer unto, answering, says:

That he is informed and believes, and that the complainant did, at or about the time in the bill of complaint mentioned, recover, in form, a judgment for the amount mentioned in the complaint; and that there exists in this honorable court, on the law side thereof, a record and proceedings purporting to evidence the recovery of a valid judgment against the said railroad company, defendant; but this defendant is advised and believes that there is in law nor fact any such recovery, because he says that there was, in fact, at the time of the commencement of the suit wherein such

recovery purported to have been had, no such corporation as the La Crosse and Milwaukee Railroad Company in existence capable of being impleaded and sued; and that such ostensible and apparent recovery is, in law and fact, wholly void, and was, in truth, collusive as against this defendant; and this defendant claims the same benefit of said matters above set forth in this, his answer, as though he had pleaded the same.

And this defendant, further answering, says that if the said the La Crosse and Milwaukee Railroad Company was, at the date of the complainant's said suit at law, and the said recovery thereon as aforesaid, a valid and subsisting corporation for the purposes of such recovery, that, nevertheless,
26 he is advised that the recovery of the said judgment and the issuance of execution thereon, in the manner and form alleged in the bill of complaint, created no right to implead this defendant in manner and form, and for the objects and purposes mentioned in the bill of complaint, because he says that he is informed and believes, and so expressly charges the truth to be, that long prior to the said alleged recovery of said judgment by the complainant, and on or about the twenty-first day of June, A. D. 1858, the said La Crosse and Milwaukee Railroad Company, in order to secure an issue of about two millions of its bonds, executed and delivered to one William Barnes, as trustee, and caused the same to be duly recorded in the office of the secretary of state for Wisconsin, its certain trust deed or mortgage, whereby, in order to secure the payment of said two millions of dollars of its bonds, the said company did grant, bargain, sell, and convey unto the said William Barnes all and singular the railroad of said company, commencing in the city of Milwaukee and running from thence to La Crosse, with its property, franchises and effects, and by words of grant and conveyance, as follows:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises, and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does, by these presents, grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces, or parcels of land which now are, or hereafter may be, or constitute, the site of the road-ways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute, or may
27 hereafter constitute, or be a part of or appertain to said railroad; and also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether now built or made, or to be built or made hereafter; and also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said raidroad, and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used on said railroad, and all the materials, tools, implements and utensils, and other personal property which have been or may hereafter be procured for or used in connection with said railroad; and also all and singular the rights, liberties, privileges and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the

property, real and personal, of said railroad company to be acquired here after, as well as that which has been already acquired, together with all the rights, liberties, privileges and franchises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed if the said railroad had already been fully constructed and equipped, excepting, however, any lands which now do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin.

And that afterwards, to wit, and on or about the eleventh day of August, A. D. 1858, and in order further to secure the payment of the said two millions of bonds, and by way of further conveyance and assurance and in pursuance of a covenant and agreement on the part of said company in the said mortgage or deed of trust contained, and by an indenture of
28 deed of trust or mortgage bearing date on said eleventh day of August, duly executed, delivered, and recorded, did make a further conveyance to the said William Barnes, as trustee, and by words of grant, bargain, sale, conveyance, and covenant, as follows:

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises and of the mutual promises herein contained, and the sum of one dollar paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, and confirm unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee and running thence to La Crosse, a distance of about two hundred (200) miles; and also the railroad of said company commencing in the village of Madison and running from thence, by way of Portage city, to the St. Croix river, or lake, a distance of about two hundred and sixty-eight (268) miles; and also the railroad of said company commencing in the village of Columbus and running from thence to Portage city, a distance of about forty (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given to said La Crosse and Milwaukee R. R. Co. by the legislature of the State of Wisconsin, or from any other source or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be, or constitute, the site of the roadways, turn-outs, engine-houses, workshops, depots, and other build-
29 ings, and all other lands and real estate which now constitute, or may hereafter constitute, or be a part of or appertain to said railroads; and including also all and singular the lots, lands, and real estate whatsoever which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges and franchises appertaining thereto, for a particular description of which lands already acquired reference is made to the various deeds of the same to the said company.

And also all and singular the superstructure of the said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made, or to be built or made hereafter.

And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property, which have been or may hereafter be procured for or used in connection with said railroads.

And also all and singular the rights, privileges, liberties, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and dessription,

And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the lands granted, or intended to be granted, to said railroad company, under or by virtue of the act of Congress and
30 the act of the legislature of the State of Wisconsin, hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate hereby conveyed or intended to be conveyed.

And also all and singular the stock, railroad, or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands, and choses in action of whatsoever nature, which may be owned, or in which the said railroad company may have an interest on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof, which may hereafter become due on any of the said bonds issued or to be issued by said company.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal and mixed, of said railroad company to be acquired or vested hereafter, as well as that which has been already acquired or vested together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the said legislature had already been fully designated and duly conveyed and duly patented to said railroad company, according to the provision of said acts.

And the said La Crosse and Milwaukee Railroad Company, party of the first part, does hereby covenant, grant, bargain, promise, and agree to and with the said party of the second part, and his successors, grantees, and assigns, to warrant and forever defend the above-described and granted premises, lands, tenements, and every part and parcel thereof; and also all the property, real, personal, and mixed, now vested or acquired, or hereafter to be vested or acquired; and also all the rights, property, real,
31 personal and mixed, choses in action, privileges, and franchises above conveyed, or intended to be conveyed, unto the said party of the second part, his successors, grantees, or assigns, against the said party of the first part, and against all and every other person or persons, States, or corporations, lawfully claiming or to claim the same, or any part thereof, subject, nevertheless, to all legal liens already existing upon the property and franchises above mentioned.

And this defendant further says, that said two instruments of deeds of trust or mortgage, construed and taken together as an entire security, have been commonly known as the third sinking fund mortgage of the La Crosse and Milwaukee Railroad Company; that afterwards arrears of interest upon bonds secured by said third sinking fund mortgage remaining due and unpaid, the said William Barnes, in pursuance of power and authority in the

said third sinking fund mortgage contained, proceeded to advertise for sale all of the property and premises in said sinking fund mortgage described and conveyed; and such proceedings were had that, on or about the twenty-fourth day of May, 1859, all and singular the property, premises, and effects mentioned and described in said third sinking fund mortgage, were sold as for default in the conditions of said mortgage, and, in pursuance of the laws of the State of Wisconsin, bidden in by said William Barnes, trustee, for the use, benefit, and behoof of the holders of bonds secured by said mortgage, for about the sum of one and a half millions dollars; and that thereupon, and on or about the 26th day of May, aforesaid, and in pursuance of the laws of Wisconsin, a new company and corporation, composed of the holders of bonds for whose benefit said property, premises, franchises, and effects were bidden in as aforesaid, was created and formed by the name and style of the Milwaukee and Minnesota Railroad Company, which thereby succeeded to all the rights of property, privileges, franchises,
32 and effects of the La Crosse and Milwaukee Railroad Company, freed and discharged of all liens and encumbrances created or suffered by the La Crosse and Milwaukee Railroad Company subsequent to the said 24th day of May, and freed and discharged of all liens and encumbrances prior thereto and created or suffered subsequent to the said 21st day of June, 1858, subject only to the right of redemption in those parties whose liens and encumbrances might have accrued in the interval between said 21st of June, 1858, and 24th of May, 1859. And the defendant prays the same advantage of the matters and things last aforesaid as though he had pleaded the same.

And this defendant, further answering, says he admits that the La Crosse and Milwaukee Railroad Company did, on or about the 26th of September, 1857, execute and deliver to this defendant a conveyance in writing, containing, among other provisions and agreements, those mentioned in the bill of complaint; but this defendant expressly denies that such conveyance was made in fraud, or with any intent or design to hinder or delay the creditors of said railroad company; but, on the contrary thereof, he says that the said conveyance was made to him—and in form denominated a lease, but in truth and in fact a mere unintentional misnomer thereof—to secure to him the payment of a just and *bona fide* debt due him from said railroad company. This defendant utterly denies any fraudulent or covinous intent in such agreement, but avers that he entered into and took the same as a mortgage to secure to him a debt due from said company accruing to him as a contractor in the construction of the railroad of the said company. He admits that he did, under said instrument of mortgage, enter into possession of said railroad, and that he has, since the first of October, 1857, and until the 18th day of May, 1860, been in the receipt of the earn-
33 ings of said road; but he says that when he came to the possession thereof the road was completed and in running order only to a point known as Kilbourne city; that he accepted and operated the road, as mortgagee in possession, up to that point, and from thence westward as sections of the road were completed to La Crosse, to which latter place the road was completed in the month of October, 1858; and he further says, that all the earnings of the road have by him been applied strictly to the purposes contemplated by said mortgage—that is to say, the payment of interest on prior mortgages and the proper care and maintenance of said road, and that there is still a large balance due him on the debt secured by such mortgage; and that for all his receipts since he has been in such possession of the income of said road, and his outlays on account of the mortgaged estate and the debt due him, to secure which said mortgage was given, he is ready to account, as this honorable court may direct.

And this defendant, further answering, says he admits the rendition of the judgment in his name against the said railroad company in this honorable court on the law side thereof, as mentioned in the bill of complaint, but he expressly denies all fraudulent or a covinous intent therein or thereby; said judgment was intended as an additional security to this defendant, and the consideration thereof was and formed part of the indebtedness for which said mortgage was given to this defendant.

And this defendant, further answering, says that his mortgage and judgment aforesaid are prior and superior liens to that of the third sinking fund mortgage aforesaid.

SELAH CHAMBERLAIN,
By his Solicitors, Emmons, Van Dyke and Hamilton.

EMMONS, VAN DYKE and HAMILTON, *Sol'rs.*

34 DISTRICT OF WISCONSIN, *ss:*

On this 12th day of June, 1860, before me, the undersigned, personally appeared Selah Chamberlain, who, being by me duly sworn, did depose and say that he had heard read the foregoing answer by him subscribed, and that he knows the contents thereof; that the same is true, of his own knowledge, except as to the matters and things therein stated to be upon his information and belief, and as to those matters he believes it to be true.

GEO. COGSWELL,
Notary Public of the State of Wisconsin, Milwaukee County.

Filed June 18, 1860.

And afterwards, to wit, on the 27th day of June, 1860, came Hans Crocker, receiver, and filed his said receiver's inventory of assets, rolling stock, material, &c., La Crosse and Milwaukee railroad, as follows:

Receiver's inventory L. C. & M. R. R.

LA CROSSE AND MILWAUKEE RAILROAD,
Milwaukee, Wis., 27 *June*, 1860.

To the Hon. Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin:

I submit herewith an inventory of the property and effects of the La Crosse and Milwaukee Railroad Company, as returned to me by the officers and agents of the company having the custody and possession of the same, and which I believe to be correct.

Very respectfully,

H. CROCKER, *Receiver.*

35 *Inventory of assets, rolling stock, machinery, tools, materials, supplies, furniture, stationery, and other property of the La Crosse and Milwaukee railroad received by Hans Crocker, receiver, June 11, 1860.*

Amounts due on freight and tickets in hands of agents.

		Freight.	Tickets.
Milwaukee station	L. Everingham, agent	$1,734 27	
Do do	E. C. Jennings, "		$200 53
Richfield do	G. H. Shafe, "	63 27	
Schoville do	T. Jeuner, "	12 87	
Hartford do	A. W. Bellows, "	32 91	
Rubicon do	W. T. Richard, "	" "	
Woodland do	J. C. Boyle, "	11 46	
Iron ridge do	E. R. Herren, "	18 86	
Horicon do	P. C. Mitchell, "	86 30	
Minn. do	S. R. Sanders, "	3 90	
Rolling Prairie do	S. Bonusbre, "	24 83	
Beaver Dam do	A. D. Leonard, "	135 20	
Fox Lake do	Je. McCullough, "	451 73	
Randolph do	L. P. Converse, "	163 32	
Cambria do	Wm. Owen, "	259 09	
Midland do	A. T. Weston, "	22 33	
Portage City do	S. S. Case, "	712 64	
Do do	T. Reed, "	" "	
Newport do	S. D. Hunter, "	68 20	
		3,801 18	200 53
Kilbourne City station	S. R. Mitchell	470 88	
Leyndon "	Wm. Case	1 07	
Manston "	Wm. Fish	13 70	
Lemonweir "	D. W. Case	138 02	
Lisbon "	C. Blowt	328 79	
Tomah "	R A. Gillette	410 96	
Greenfield "	F. Whitcomb	120 82	
Sparta "	J. A. Chandler	351 43	
Oakland "	C. W. Hersey	" "	
Bangor "	D. J. Jenkins	194 25	
		5,941 05	
E. C. Stickney, Greenfield		54 00	45 80
W. H. Campbell, "			41 30
		5,995 05	287 63

36 ROLLING STOCK.

23 locomotive engines, Nos. 1 to 21, and 29 to 33 inc.
17 first class passenger cars.
2 second class do.
6 baggage do.
3 mail and express do.
222 house freight cars.
108 platform do.
24 dumping do.
17 hand do.
6 rubble do.
2 snow plows and fixtures.
13 sheet iron snow plows, &c.

MACHINERY AND TOOLS.

1 stationery engine, boiler and fixtures.
14 bench vices
1 16-ft. engine lathe.
1 14 " screw-cutting do.
1 driving wheel do.
1 21-ft. double head engine do.
1 cylinder boring machine
1 Holley's rotary pump.
1 air "
1 McGowan's "
1 portable forge.
1 hanging drill and counter.

1 10 " double head engine do.
1 6 " hand lathe.
1 12 " iron planer.
1 4 " do do.
2 upright drills.
2 bolt-cutting machines, taps and dies.
1 hand valve-seat planer.
1 boiler punch and shears.
1 8-inch universal chuck.
1 18 " do. do.
1 21 " do. do.
24 chipping hammers.
8 shop do.
260 steel chipping chisels.
9 ratchet drill stocks.
9 monkey wrenches.
24 screw do.
116 lbs. iron do.
275 " holding bars.
4 bench vices.
37 1 set boiler iron rollers.
1 24-in. steel square.
2 switch ropes.
1 patent car-carrying jack.
1 platform scale.
1 wheel press.
1 scroll sawing machine, &c.
1 boring do.
1 large splitting sawing do.
1 large do. do. do.
1 tenon do. do.
1 wood-planing do.
1 wood-turning lathe do.
1 geared irregular cutting do.
1 force and lifting pump.
707 lbs. C. S. turning chisels.
55 " " punches and drills.
45 " " caulking tools.
73 " mandrills.
30 " " sets.
10 " " stay bolt taps.
44 " " hammers do.
167 " planing chisels.
25 " do. do.
83 " drills.
12 car and engine jacks.
4 carrying "
7 sets falls and tackle.
2 switch blocks.
11 heavy loco. chains, rings, and hooks.
1107 lbs iron nut wrenches.
14 stoves and pipe, mach'e shop.

COPPER SHOP TOOLS.

3 mandrills.
1 pr. large shears.
1 " small do.
1 smith's large bellows.
3 ladles and kettle.
1 water pail, 1 soldering copper.
3 lamps, 1 lamp-filler.
1 saddle mould.
1 steel square.
4 hammers.
1 hack-saw.
1 pr. balances.
3 pr. tongs.
1 bench vice.
2 anvils.

TIN SHOP TOOLS.

1 pr. snipps.
1 " large shears.
2 " mandrills.
1 needle case stake.
1 hatchet "
1 blow house "
2 beak " "
1 square "
1 stove-pipe "
1 large bright "
1 square "
1 pr. plyers.
1 pr. rollers, 1 stove-pipe folder.
1 large turner.
1 small do.
1 creasing stick.
1 cantril mould do.
1 compass.
1 standard.
1 tinners' stove.
3 soldering irons.
1 lamp stand.
2 raising hammers.
6 hollow punches.
3 groves.
1 pair wire cutters.
1 vice, 1 folding machine.
1 groving machine.
1 Binney do.
1 wire do.
1 swedging do.

BLACKSMITH SHOP TOOLS.

9 anvils, 1,700 lbs.
16 sledges, 224 do.
38 14 C. S. hammers, 32 do.
850 lbs swedges.
1,800 do. tongs.
1 spring bench and vice, 209 lbs.
1 set spring tools, 22 do.
1 swedge block, 185 lbs.
3 cast plates, 1,210 "
9 sets C. S. tools, 1,462 do.
200 bolt mac.
1 set heading tools, 204 lbs.
1 " nut mandrills, 54 "

PAINT SHOP TOOLS.

8 varnish brushes.
11 paint do.
8 sash tools.
6 4-qt. pails.
7 2 " do.
11 caps.
3 2-gall. cans.
2 5 " do.
2 10 " do.
1 putty board.
1 glass do.
1 sieve.
1 brass kettle.
1 iron do.
3 stoves.
10 fitches.
4 whitewash heads.
2 sable striping brushes.
9 swan quill do.
10 " " lettering do.
22 goose " striping do.
24 " lettering do.
1 spring balance.
2 paint mills.
1 " stone.
1 " mortar.
1 " knife.
1 " cupboard.
1 desk.

CARSMITH TOOLS.

7 jack screws.
6 punch bars.
55 lbs. C. S. chipping chisels.
19 screw wrenches.
2 stoves and pipe.
3 braces and 4 auger bits.
2 hand drills.
2 stocks and dies.
6 lanterns.
1 glue pot.
4 iron vices.
2 heavy adze.
10 augers.
5 work benches, with iron.
1 grindstone.
7 hammers.
22 files.
8 water pails.
1 ash pail.
1 pair snips.

CARSMITH TOOLS.

12 oil-cans
1 stove and boiler.
8 shop lamps.
39 1 wheelbarrow.
3 car brushes.
1 oil pail.
2 axes.
2 brooms.
1 feather duster.
2 stove do.

CAR SHOP TOOLS AND FURNITURE.

1 hoisting machine.
19 work benches, iron screws.
3 benches.
45 saw-horses.
15 high do.
4 long do.
3 sledge hammers.
4 iron bars.
4 sets clamps, with screws.
2 pr. match planes.
2 " bear do.
10 webb saws.
3 billet do.
1 cross-cut do.
1 whip do.
1 broad axe.
1 platform scale.
2 oil dripping-pans.
7 jack screws,
20 screw wrenches.
2 socket do.
95 C. S chipping chisels.
21 augers.
18 hammers.
2 stocks and dies.
10 taps.
2 grindstones.
8 boring mach. augers.
32 shop lamp, 4 oil-cans.
3 cupboards.
1 ticket case.
7 stoves and pipe.
1 wheelbarrow.
1 hand lumber cart.
2 1-gall. measures.
2 ½ " do.
3 funnels.

TRACKMEN'S TOOLS.

161 shovels.
94 picks.
59 crowbars.
73 tamping do.
18 track gauges.
4 cross-cut saws.
4 box rollers.
23 water-pails and dippers.
86 chisels and punches.
16 axes.
20 adze.
25 hoes.
40 spiking hammers.
6 monkey wrenches.
20 red flags.
15 green do.

WATER STATION AND ENGINE-HOUSE FURNITURE.

pumps at water stations.
1 set heavy rigging.
1 " light do.
15 stoves and pipe fixtures at engine and water stations.

40 MATERIALS AND SUPPLIES.

44,441 lbs. flat bar iron.
11,069 " round do.
1,496 " bundle do.
3,954 " square do.
3,525 " Am. boiler do.
2,964 " Eng. bar do.
2,306 " miscellaneous do.
1,326 " tank do.
20,559 " scrap do.
10,486 " spring steel.
1,710 " new loco. and car springs.
3,600 " old do. do.
218 " cast rocker shafts.
660 " coupling links.
180 " " pins.
3,292 " wrought bolts.
7,672 " worked wrot. iron.
3,340 " do. do. do.
8,804 " cast iron scrap.
116 " shafting hangings.
64 car wheels.
448½ lbs. 2-in copper flues.
1,122 " 1¾ " "
48 " ¾ tubes.
562 " Russian sheet iron.
200 " Am. " "
75 " iron wire.
Freight and passenger car patterns, cost 321.
250 lbs. ground lead.
220 " dry do.
12 " red do.
46 " Indian red.
80 " litharge.
30 " lampblack.
8 " drop lake.
1 " vic. do.
24 " English vermillion.
41 2½ " sponge.
213 " whiting.
146 gall. varnish.
5 " bro. Japan.
9 books, gold leaf.
5 oz. gold bronze.
282 lbs. ochre.
525 galls. elephant oil.
84 " lard do.
168 " tallow do.
84 " paraffine do.
72 " head light do.
70,713 ft. oak car timber.
2,816 " maple do.
40,217 " oak car lumber.
23,710 " ash do.
168,746 " pine do.
3,936 " cherry do.
55 kegs rail road spike.
1,417 do. chairs.
1,716 feet crossing plank.
4,400 lbs. scrap spring steel.
4,586 " cast steel.
725 " boiler and tank rivets.
1,386 " new brass castings.
1,083 " old " "
39,408 " car axles.
18,483 " locomotive axles.
119 locomotive, track, and tender wheels.
15,088 lbs. new loco. tyres.
8,099 " old do. do.
4,023 " cast iron frogs.
10,155 " loco. driving wheels.
91 " engine truck brace.
164 " switch irons.
1,976 " hand-car wheels.
24,407 " iron car castings.
4,351 " do. do.
1,855 " wrought bolts.
2,750 " loco. iron castings.
206 " " brass do.
973 " C. J. switch chairs.
18,800 " hot pressed nuts.
13,674 " iron castings, ass'd.
500 lb. old sheet copper and brass.
2½ boxes tin plate.
Locomotive and tender patterns, cost $2,071.
Shop tool patterns, cost 181.
Road patterns, cost $300.
86 lbs. chrome green.
166 " " yellow.
25 " French orange mineral.
3 " Te de Sienna.
6 " Turkey umber.
3¾ " Beeswax.
8 " pulv. pumice-stone.
1½ " drop black.
5 " Chinese blue.
3,269 " mineral paint.
32 " Venetian red.
203 galls linseed oil.
10 " turpentine.
98 lights French car glass.
427 Am window glass, 9 × 14 to 11 and 17, ass'd.
1,357 lbs. duck waste.
2,238 " white cop. do.
979 " hemp packing.
15 " wool
12 ft. 2½-in rubber hose.
35 " 5-in " do.
888 ft. maple car lumber.
5,000 " white wood do.
750 " black walnut do.
18,354 " mat hed ceiling and flooring.
1,172 " do do.
6 kegs fence nails.
14,000 ft. fencing.

1,751 ties.
1,467 iron rails.
3 rail frogs.
1,276 ft. ash car timber.
18 kegs nails.
4 " wrot. spikes.
1,074 " wrought spike rubber springs.
1,032 " brass car boxes.
1,300 " wrt. iron washers.
120 yards roofing duck.
2,750 lbs. carriage duck.
520 " coach screws.
561 gross wood do. (iron.)
35 " brass do.
11 lbs. brass window lifts.
16 " hat-cord stays.
8 " seat hooks.
42 3½ " brass seat rivets.
5 brass door knobs.
24 lbs. do. bell cord hanging.
¾ doz. silver plated knobs.
5½ " brass do. do.
1 " electro-plated do.
⅓ " mineral do.
1 car head lining.
1½ doz. brass car door butts.
6 " iron do.
4½ " bolts.
4½ " car rings.
2½ " brass shutter hooks.
2 8/12 " car locks, freights.
24 gross crimson buttons.
12 " plush nails.
12 " head lining do.
18 car brakes.
kegs railroad spike.
½ " boat do.
½ " 4th nails.
1 buck-saw.
3 C. S. wrenches.
12 tank hose.
34 bars soap.
2 doz. sperm car candles.
⅓ " papers stove blacking.
5/12 " padlocks.
½ " tin lamp filters.
4 " " chimneys.
5 " broken lamps.
3 16/12 " lamps.
1 punch bar.
1 claw do.
9 steam gauges.

1,397 " light □ timber.
500 fence posts.
6,910 cords wood.
57 yards crimson plush.
9 pr. strap hinges.
24 lamp ventilator rings.
10 parafine lamps.
18 chimneys.
120 lbs. curled hair.
966 lts., sash.
150 ft. 1¼-inch rubber hose.
277 hammer and sledge handles.
60 axe do.
46 adze do.
62 pick do.
4¼ doz. car window fasteners.
2 " match lighters.
2 " bell cord.
2 " coupling hooks.
3 " car bind fasteners.
1½ " iron chest locks.
1¼ " cupboard do.
⅝ " padlocks.
¼ " com. door do.
2 " brass carkim do.
1¾ " Japan do.
13 gross cut tacks.
12 freight car draw irons.
9 passenger do. steps.
8 break beams.
4½ boxes window glass.
3 sets draw-iron timbers.
2 " wheal car doors.
3 doz. Ames' shovels.
2 " hammer handles.
⅝ " axe do.
2/12 " adze do.
3 5/12 " railroad adzes.
5 1/12 " picks.
8/12 " spiking hammers.
4 qt. measures.
5 pt. do.
2 1-gall. cans.
7 3 " do.
½ doz. scrubbing brushes.
⅙ " stove brushes.
15 gall. sperm oil.
15 " elephant do.
5 " burning fluid.
2 " turpentine.
2 doz. switch plates.
88 " files, assorted.
9 " screw wrenches.

INVENTORY OF PROPERTY IN GENERAL OFFICE, MILWAUKEE.

43 50¾ reams printed forms.
500 local freight tariffs.
14 freight received books.
5 " forwarded do.
3 " " copying.
25 vowel indexes.
6 dray receipt book.
12 baggage checks do.
1¼ do. time do.
1 " passenger do.

21 receipt books, out freight.
9 " " in do.
22 collection do.
22 daily cash.
30 tally " books.
4 train register's telegraph book.
11 blank books, " receipts.
½ ream blotting paper.
½ " invoice do.
2 doz. lead pencils.

3 M envelopes, No. 1.
1½ — —— " 6.
1½ — —— " 8.
1 long counter.
1 stand.
Notice to passengers.
1 " paper folder, (ten.)
½ ream cap paper.
½ doz. ink pits.
1 step-ladder.
1 L gas-fixture.

IN GENERAL TICKET OFFICE.

1 case drawers.
1 " " and shelves.
1 copying press and table.
2 small tables.
1 telegraph table and instrument.
1 stove-pipe.
1 L gas fixture.
1 portable do.
1 looking-glass.
2 paper baskets.
1 railroad map.
3 window curtains.
2 long ticket cases, *bl'k walnut.*
1 washstand and bowl.
1 counter, with drawers.
1 high desk.
1 low do.
5 chairs.
1 gas chandelier.
1 small iron safe.
1 hemp carpet on floor.
8½ M printed tickets.
1 eyelet machine.

GENERAL FREIGHT OFFICE.

1 high desk.
1 oak low desk.
1 small mahogany do.
1 copying press and table.
1 Salamander safe.
1 Herring do.
44 5 chairs.
1 high stool.
1 looking glass.
1 hemp carpet on floor.
1 map each, railroad and State.
1 ledger and journal, (new.)
1 oak table.
1 small do.
1 case pigeon-holes and stand.
1 eyelet machine.
1 stove and pipe.
1 lounge.
1 gas chandelier.
1 feather duster.
2 paper baskets.
1 card rack.
2 window curtains.

IN SECRETARY'S OFFICE.

1 long counter and desk.
1 B. & B. iron safe.
1 Herring do.
9 chairs.
1 feather duster.
1 P. O. box.
1 card rack.
1 small desk and table.
1 " table.
1 copying press and stand.
1 bl'k walnut long case.
1 " " book "
1 carpet on floor.
1 each, R. R. and U. S. map.

IN CASHIER'S OFFICE.

1 "B. & B." iron safe.
1 long counter and desk.
1 oak desk.
1 carpet on floor.
1 stove and pipe.
1 high stool.
1 eyelet machine.
1 copying press and table.
1 writing table.
4 chairs.
1 gas chandelier.
1 paper basket.
1 looking-glass.
1 water-cooler.

IN MANAGER'S OFFICE.

1 B. & B. iron safe.
1 writing table.
2 gas chandeliers.
8 chairs.
1 sofa.
4 large mats, and numerous plats, profiles, and land lines relating to location of road.
1 small desk.
1 stove and pipe.
2 carpets on floor.
1 paper basket.
6 window curtains.
1 round table.

IN LOCAL TICKET OFFICE.

1 small Fire King iron safe.
1 dating press.
1 chair.
1 ticket safe case.
1 coupon " "
1 L gas fixture.

45 IN PASSENGER ROOMS AND HALL.

3 stoves and pipe.
2 washstands and bowls.
2 gas chandeliers.
2 L gas fixtures.
1 harp do.
1 long settee, (velvet carpet.)
1 clock.
1 pump and sink.
1 looking-glass.
2 baize screens.
2 wood boxes.
1 chair.
3 water-coolers and 1 stand.
11 long settees, with arms, (Brussels.)
1 3-bracket gas.
1 gas lantern, *out-doors.*

IN ALL OFFICES.

12 inkstands.
7 spittoons.
5 tin folders.
1 P. O. scale.
7 P. O. stamps.
9 letters and paper clips.
9 pen-racks.
2 hand-stamps.

Movable property in freight depot, Milwaukee.

CASHIER'S OFFICE.

1 desk, 1 rack pigeon-holes.
4 inkstands, 3 pen-racks.
2 paper-cutters, 1 bottle.
1 ruler, 1 map of Wis.
1 chair, 1 window curtain.
1 stool, 1 stove and pipe and zinc.
1 old paper weight, 1 letter-holder.
1 gas-burner, 2 lights.

AGENT'S OFFICE.

1 Herring safe, 1 bookcase.
2 large desks and tops, 5 stools.
1 small " 2 chairs.
6 inkstands, 3 p. weights.
3 paper cutters, 6 forwarding books.
7 duplicate books.
174 volumes of freight rec'd and forw'd, (old.)
1 letter-press and stand.
5 window curtains, 1 clock.
2 gas burners, (1 3-lt. and 1 4-lt.)
1 stove-pipe and zinc, 1 letter-holder.
2 bottles ink.
1 brush and desk, 1 large bank Co.

WAREHOUSE.

4 stoves, pipe, and zinc.
4 desks, (old and cheap.)
2 station racks.
4 Fairbanks's scales and weights.
1 Gaston do.
1 old stool.
1 inkstand.
46 1 paper cutter.
5 clipps.
1 crowbar.
4 brooms.
9 gas-burners, 2 lights.
23 " " 1 "
24 warehouse trucks.
2 water pails.
2 dippers.
3 chairs 2 benches.
3 small b nches.
2 inkstands.
1 pig on-hole rack.
3 lanterns.

TIME-KEEPER'S OFFICE, ROUND-HOUSE.

3 desks and bookcases.
1 clock.
1 oak table.
5 chairs.
1 letter-press stand.
1 " " "

RICHFIELD STATION.

1 desk, 1 table, 1 telegraph do.
1 washstand, 1 large stove-pipe.
2 paper boxes, 1 small do. do.
1 weight, 1 scale, 1 truck.
1 bottle black ink.
1 " red do.
2 lanterns.
2 oil-cans.
1 baggage check book.
3 dozen ticket and 3 dozen freight blanks.
½ " balance, 4 " cash do.
7 " large, 10 doz. md., 3 do. small.
125 large envelope.
100 small do.
5 qrs. note paper.
1½ " foolscap "
15 baggage check.
3 stools, 1 chair, 2 benches.
1 telegraph instrument.
1 " register.
1 shovel, 2 inkstands.
1 clip.
1 ticket box.
1 station lamp.
1 turpentine can.
1 freight receiver's book.
1 " forw'd do.
1 index do.
1 ticket do.
1 freight receipt do.
1 tally do.
1 out frt. receipt do.
1 train and message do.
1 cash do.
1 conductor's receipt do.

SCHLEISINGERVILLE STATION.

1 desk, 1 book shelf.
3 chairs, 1 box stove.
1 platform scale, 2 hand-trucks.
1 desk and 3 door-keys.
4 freight receiving books, 1 in use, 4 old.
3 " forwarding " 1 " 2 "
6 out freight " 1 " 5 "
3 receipt books, 1 " 2 "
2 ticket " 1 " 1 "
2 collection "
47 2 cash "
2 index "
1 receipt "
20 blanks frt. and tic. to suit cash'r.
20 baggage checks.
1 purch bar, 1 axe, 1 shovel.
1 large lamp, 2 small lamps.
1 oil-can, 1 car, and 1 switch-key.
18 sheets writing paper.
75 envelopes.
1 ruler, 1 pen-rack, 1 inkstand.
1 folder.
9 blank sheets, statistic.
125 " freight rec'd.
1 " " forw'd.
3 " balance sheets.
58 " weekly freight rep'ts.
18 " " ticket "
135 " way-bills.
250 " bill heads.

HARTFORD STATION.

1 receiving book, 1 forwarding do.
2 receipt " 1 frt. check do.
1 cash " 1 ticket do.
1 conductor's receipt book.
1 baggage check "
1 telegraph "
2 index "
9 pk'gs large envelopes.
4 " small do.
7 qr. fc. paper.
145 way-bills.
1 stove, 5 chairs.
1 desk, 1 high stool.
1 parafine lamp.
1 oil-can.
1 turpentine-can.
1 set Fairbanks's scales.
1 purch bar, 1 broom.
178 blank frt. forw'd.
117 blank frt. rec'd.
23 remittance sheets.
137 bill-heads.
8 statistic sheets.
4 balance "
38 tickets reports weekly.
69 " " monthly.
60 cash'r memorandums.
1 pen-rack, 1 inkstand.
1 bottle black, 1 bot. red ink.
½ box s pens.
2 lanterns, 1 large lantern.
1 telegraph table.
1 " register.
1 " relay.
1 " key.
2 battery cups.
1 " box.

RUBICON STATION.

1 freight forwarding book.
1 " receiving "
1 cash book, 2 receipt do.
1 stove and pipe, 1 pr. trucks.
1 stool.
1 ticket book.
1 check "
2 qr. paper, 3 bunches envelopes.
50 way-bills.
2 lanterns.

WOODLAND STATION.

1 collection book.
1 cash "
1 freight rec'vg "
1 do. forw'd "
1 check "
1 cash receipt "
48 71 freight received blanks.
105 " for'wd "
2 monthly balance "
55 Lac. and C., St. P. and F. way-bills.
62 Mil. and Hor. "
½ roll tel'ph paper.
10 lbs. vitriol.
1 telegraph table.
2 chairs and 1 settee.
3 glass oil-lamps.
1 parafine "
1 lantern "
1 crowbar.
1 Fairbanks's platform scale.
½ gall. parafine oil.
1 pen-rack, 1 paper-holder.
1 box steel pens, 1 bot. red ink.
1 bot. fluid, 1 bot. copying ink.
1 ruler, 75 large, 19 small, envelopes.
½ doz. lead pencils, 5 qr. paper.
4 weekly reports, 1½ " foolscap.
12 monthly " 12 remit. sheets.
400 bill-heads.
345 way-bills, small.
44 " large.
1 new relay telegraph.
1 register "
1 chest local battery.
2 boxes tel. paper.
1 desk.
1 large lantern, out-doors.
2 oil-cans.
1 broom, 1 axe, 1 hammer.
2 stoves, 15 lengths pipe, 5 elbows.
1 pr. warehouse truck.
½ gall. lamp-oil.

IRON RIDGE STATION.

1 desk, 1 settee, 5 chairs.
2 pr. trucks, 1 set scales.
1 piece zinc, 1 axe, 2 brooms.
1 receipt book, 1 collection do.
1 daily cash book, 1 ticket, old.
1 bill book, 1 index book.
1 baggage, 3 receiving "
1 bill book, 2 index book.
1 ticket " 10 pk'gs envelopes.
1 bot. mucilage, 1 inkstand.
1 part box steel pens,
2 desk keys, 1 ticket-box key.
1 large lamp, 2 oil-cans.
1 purch bar, 1 stove, 9 lengths pipe.
1 receiving book, 1 forwarding do.
1 out-freight " 1 in-frt. do.
2 forwarding book.
2 in-freight receipt do.
6 out " " do.
1 collection do.
2 qr. paper, 1 desk stool.
1 ruler, 1 eraser, 3 penholders.
1 switch key, 1 car key.
1 Horicon car key, 3 door "

HORICON STATION.

1 writing desk, 1 ticket do.
2 stoves, 5 chairs.
1 desk stool, 1 pail, 1 broom.
1 pr. platform scales.
1 crowbar, 1 telegraph relay.
2 battery cups, 1 do. register.
1 receipt book, 30 sheets post paper.
1 telegraph table.
1 gal. battery chest.
2 oil-lamps and filler.
2 oil-cans, 1 settee, 2 trucks.
2 zincs, 2 lbs. vitriol, 1 frt. forw'dg and 1 receiving book, 1 cash book.
12 envelopes, 1 inkbottle, 2 stands.

MINNESOTA JUNCTION STATION.

1 hand-truck, 1 baggage do.
49 1 sett platform scales, 1 shovel.
1 splint broom, 1 inkstand.
1 box pens, 1 bot. red ink.
½ " black, 1 doz. lge., 1 do. small envelope.
2 gall. parafine oil and can.
1 " lamp oil, 1 filler.
1 pr. scissors, 1 lantern.
1 parafine lamp.
4 frt. forw'd'g books.
5 " rec'd " 3 cash do.
2 tally books, 1 blank do.
1 ticket do., 2 qr. note paper.
4 qr. foolscap paper, ½ letter do.
½ " remit. sheets, 2 doz. receipts.
1 doz. tickets, 4 qr. freight do.
1 " monthly ½ rm. balances.
1 tic. case and press, 1 check stand and book.

ROLLING PRAIRIE STATION.

2 settees, 4 arm-chairs, 1 stove and pipe.
1 dup. book, 1 forw'd book.
1 report book, 1 tally do.
1 inkstand, ½ box pens, 1 pinch bar.
2 glass lamps, 1 ash pan, 1 desk.
1 bot. ink, 1 oil can, 1 gall. oil.
Way-bills, 1 rule, 1 folder.
1 office stove, 3 truck, 1 sett scale.
1 call-book, 1 cash do.
2 blank receipt do., 2 vg. paper.
1 old axe, 1 old shovel, 1 lantern.
1 stool, 100 large and 100 small envelope.
1 lamp filler, lot blanks.
¾ cords wood, for stove.

BEAVER DAM.

1 long desk, 2 tables, bookcase.
1 window chair, 1 glass lamp.
2 stoves and pipe, 1 carpet (20 yds.)
1 small case, 1 pen rack, 1 tin do.
4 inkstands, 1 pr. shears, 1½ box pens.
2 bottles ink, 2 folders.
1 warehouse scale.
1 " truck.
2 chairs, 1 stool.
2 parafine lamp, 1 press and stand.
2 hanging do., 1 safe.
1 par. weight, 2 clips.
½ ream paper, 1 rm. blanks.
1 sofa, 1 settee and cushions.
1 telegraph instrument.
Blank books belonging to station, either filled or in use.

FOX LAKE STATION.

1 desk, 1 small do., 1 stool.
1 com. oil lamp, 1 parafine do.
1 parafine oil can, 1 letter box.
1 receipt book, 1 receipt book.
1 receiving do., 1 forwarding do.
Several old books (filled.)
Quantity of blanks.
2 inkstands, 1 ruler, 1 bottle and brush.
1 settee, 2 com. chairs, 1 stove and pipe.
1 water pail, 1 calculation book.
1 daily cash and 1 tally book.
1 ticket book, 1 baggage do.
1 Fairbanks's scale.
3 warehouse trucks.
1 scoop shovel, 1 large lamp.

RANDOLPH STATION.

1 large office desk.
1 ticket draw.
50 1 frt. ford. book.
1 " rec'd do.
2 index do.
1 ticket do.
3 receipt and 2 check do.
1 lantern, 1 oil can.
100 way-bills, 51 bill-heads.
10 qr. paper, 5 monthly balances.
125 envelops, 50 report do.
50 steel pens, 7 statistic reports.
50 vouchers (overcharges.)
25 blank cashier slips.
2 stoves, 4 chairs, 1 settee.
1 pr. trucks, 1 lamp.

CAMBRIA.

1 bookcase and desk.
2 oil cans, 2 hand lamps.
1 ash pail, 3 stoves and pipe.
1 bedstead, 2 curtains and fixture.
1 stub. and receipt book.
10 old books, 2 stands.
¼ 1 blotter book.
1 desk, 5 chairs, 1 tic. draw.
1 big lamp, 1 glass lamp.
1 truck, 1 sett scales.
1 ticket book, 1 check.
1 cash book, 1 ford. and 1 rec't do.
2 reams blanks, ¼ rm. paper.
17 checks.

MIDLAND STATION.

1 safe, 1 stove, 1 desk.
1 table, 1 tic drawer.
2 chairs, 1 desk chair.
1 stand lamp, 1 side lamp.
1 oil can, 1 lamp-filler.
1 stove, 2 benches.
2 chairs, 1 gas lamp.
2 trucks, 1 axe, 1 marking cup and brush.
1 bottle fluid, 1 red do.
1 forw'd and 1 rec'g book.
1 receipt book, 1 duplicate do.
1 collection " 1 conductor's rec't do.
2 index, 2 qr. paper, 100 large, and 50 small envelopes.
1 fluid can, 1 sett scale.
1 ash pail.

PORTAGE CITY STATION.

3 desks, 1 tic. case, 6 lamps.
3 stoves and pipe, 3 lanterns.
9 chairs, 1 table lounge.
1 sett scale and weights, 1 iron bar.
A general but small assortment of blanks.
1 new blank receipt book, about ½ used up.
1 oil can.
1 clock, 1 iron safe, 2 outside lamps.
1 shovel and tongs, 1 ash bucket.
2 trucks, 1 lamp-filler.
2 inkstands, stationery.
Sett of books.

PORTAGE CITY BLACKSMITH SHOP.

1 anvil, 292 lbs., 1 bellows.
33 tongs, 327 " 3 sledges, 2 hammers.
9 heading tools, 58 lbs.
14 swedges, c. s., 52 "
15 boltan, 74 "
8 fullers and 3 flatters, 60 lbs.
51 8 bottom fullers, 2 vices.
1 shovel, 1864 iron.
451 spring steel.
160 c. steel.
2000 work iron.
1 ratchet, 12 drills, 5 lbs.
Drill rigging, 60 lbs.
Punches and chisels, 70 lbs.
2 plates and 20 taps.
7 wrenches.
1 monkey wrench.
1 pr. callipers, 1 grindstone.
5 taps wrenches.
3 pails and 1 broom.
299 lbs. nuts.

PORTAGE CITY CAR SHOP.

104 ft. ash plank.
150 " pine.
7 brakes, complete.
15 " beams.
12 " blocks.
13 lts. glass, 2 handscrews.
4 augers, 1 stove.
6 gross screws.
2 pr. good wheels.
3 " old do.
88 bolts.
165 nails.
27 paint.
100 waste.
1 bbl. oil.
3 jackscrews, 2 oil cans.
2 car-dusters, 2 brooms.
3 wrenches, 5 locks, 12 files.
1 ash kettle, 2 brass fawcets.
4 barrels, 1 oil-dipper.
1 grindstone.
6 rubber springs.
2 hammers.
3 pr. brass butts.
168 lbs. " boxes.
1023 " cast iron.
25 " hair.
2 pails.

52 INVENTORY ON WESTERN DIVISION.

4287 cords of wood.
421 bars iron.
19 hand cars.
16 adze and handles.
49 cold chisels, 20 punches.
3000 ft. plank.
14 lanterns.
24 padlocks.
16 hatchets, 25 lbs nails.
7 pumps.
1 switch rope.
12 stoves, 78 lengths pipe.
109 shovels, 19 claw-bars.
45 lining bars, 27 hammers.
53 picks and handles.
1 grub hoe, 10 monkey wrenches.
17 guages, 24 water pails.
10 spirit levels, 20 oil cans.
12 large oil cans, 30 signal flags.
34 tamping bars, 11 tool boxes.
2000 ft lin. sq'e timber.
17 axes (narrow.)

NEWPORT STATION.

1 office desk, 1 inkstand.
1 paper-holder, 1 rule.
1 " weight, 1 tic. case.
2 " folders, 1 " dater.
1 desk stool, 6 pass. chairs.
1 wood settee, 2 stoves.
4 glass lamps, 1 can and filler.
1 parafine do., and oil can.
1 large lantern, 2 globe lamps.
1 axe, 1 lge hammer, 1 pr. shovels.
1 shovel, 1 tongs, 2 chairs.
15 joints pipe.

KILBOURN CITY.

1 lounge, 2 stoves and pipe.
12 chairs, 1 telegraph table.
1 press and stand, 1 stove and pipe.
2 freight forwarding books.
4 " rec'v'g "
2 daily cash "
3 collection "
3 index "
3 inkstands, 2 bottles ink.
2 paper folders, 1 " red "
2 shipping books, 1 lamp.
14 bl'k weekly ticket reports.
6 " " monthly "
273 " vouchers.
151 whole sheet way-bills, F. D.
134 ½ " " "
187 ¼ " " "
5 blank balance sheets.
53 8 " statistic "
2 pencils, 26 pens and holders.
5 qr. paper.
192 envelopes.
1 eraser.
1 rule.
1 platform scale.
1 old axe, 1 crowbar.
2 trucks, 1 canvass.
1 ash pail.
1 frt. forwarding book, 1 letter book.
1 brush, 2 lanterns, 2 side lamps.
1 piece zinc, 2 glass lamps, 1 oil can.
1 fluid can, 1 water pail.
4 frt. delivered receipt books.
4 " rec'd " "
1 rec't book, 2 ticket books.
1 telegraph instrument and fixtures.
1 letter box, 1 letter clip.
163 blank notices.
89 " " cash'r.
379 " " consignees.
430 small bill-heads.
263 ½ sheets "
559 sheets way-bills.
170 ½ " "
122 whole "
43 blanks.
161 ½ sheet "
716 whole "
123 sheets blanks.
12 sheets foolscap.
1 dust brush.
1 broom.
1 large outside lamp.
1 switch key, 1 shovel.
1 purch bar, 1 car key.
1 pr. tongs.

LYNDON STATION.

1 truck, 1 settee, 4 chairs.
1 desk, 2 glass lamps.
150 envelopes, 1 rec'g book.
1 daily cash, 1 forw'd "
1 baggage book, 2 receipt "
1 ticket book, 1 collection "
1 inkstand, 1 pen rack.
3 lanterns, 1 large lamp.
1 ticket case, 1 dating press.
1 letter clip.
1 folder, 1 paper weight.
1 P. O. delivery.
Small supply book.

LEMONWEIR STATION.

1 set scales and weights, 1 truck.
1 dating press, 1 record book.
1 coll. book, 1 receiver's book.
1 " blotter, 1 ticket book.
¾ doz. blanks, statistics.
¾ " weekly reports.
1½ " monthly "
1½ " notices cash'r.
2 oil cans.
2 lanterns.
1 stove and pipe, 1 ticket case.
1 record book forw'd'g, 1 daily cash.
1 consign. book, 1 agent's book.
1 index, 12 doz way-bills.
¾ " balance sheets.
4 doz. blanks freight rec'd.
1½ " " " forw'd.
2 correction sheets.
¾ doz vouchers, overcharges.
6 doz. miscellaneous sheets.

MANSTON STATION.

1 set R R. books.
1 writing desk, pen rack.
1 hanging lamp, 2 chairs.
1 settee, ½ set cane chairs.
1 spirit level, 1 marking pot.
2 doz. steel pens.
1 bottle ink, 2 qr. paper.
1 counter brush, 2 lamps.
1 side lamp, 1 hand lamp.
1 purch bar, 1 hand axe.
1 water pail, 1 inkstand.

LISBON STATION.

89 lengths stove-pipe and 7 elbows.
54 1 double writing desk.
1 safe, 1 telegraph instrument and fixtures, 1 writing table.
1 bedstead and fixtures.
1 carpet and 1 settee, 1 pr. platform scales.
1 pinch bar, 3 empty bbls.
1 freight book rec'd, 1 daily cash.
1 coll. book, 1 shipping book.
2 paper-holders.
2 " racks, inkstands.
1 C. & I. switch key.
1 bbl. (34 gall.) oil.
1 oil measure, 1 funnel.
1 large lamp, 1 hand lantern.
2 office do. 3 chairs.
2 com. chairs, 1 stool.
2 hand truck.
1 lamp-filler.
325 blanks, 1 freight book.
1 receipt book forw'd.
2 " " del'd.
1 bottle ink.
1 " red "

TOMAH STATION.

1 desk, 1 tic. case, 1 stove.
1 oil can (2 gall.)
1 parafine lamp, 1½ gall. oil.
22 blank way-bills.
68 " fr't. reports.
37 " tic. "
5 " balance sheets.
102 expense bills.
12 statistic reports.
185 statistic letters.
6 chairs, 1 settee, 2 lanterns.
1 forwarding book.
1 receiving do.
1 collection do.
1 daily cash do.
1 ticket do.
1 ticket receipt do.
2 freight " do.
2 qr. paper, 3 large envelopes.
4 pks. small

GREENFIELD STATION.

1 settee, 2 chairs.
2 office stoves, pipe, and shovel.
1 ticket case and press.
1 gas burner and 1 oil lamp.
1 large lantern.
1 small do.
3 oil and 2 fluid cans.
1 lamp-filler, 1 pail.
1 tank stove.
1 writing desk.
1 telegraph instrument.
1 table do.
1 box battery
2 brooms, 1 axe.
1 crowbar, 1 sledge-hammer.
1 pr. scales, 1 set truck.
1 platform, 1 set books for freight tickets, and blanks for freight, and ticket, and cash, pens, pencils, ink, paper, &c.

SPARTA STATION.

1 platform scale.
1 pr. truck.
1 foreign tic. case.
55 1 local " do.
3 inkstands.
2 pa. weights.
½ doz. penholders.
1 broom, 1 ash pail.
1 P. O. box.
2 ticket stamps.
1 writing desk.
1 set R. R. books.
½ rm. writing paper.
1 " blanks.
1 box pens, 2 lamps.
1 l'ge lantern, 1 small do.
1 broom, 2 oil cans.
9 chairs, 2 settees.

OAKLAND STATION.

1 counter desk.
1 inkstand.
1 axe and handle.
2 gall. oil and can.
1 stove and pipe.
1 tic. case and stamp.
1 white lantern.
1 fluid can.

BANGOR STATION.

1 platform scale.
1 truck, 1 stove and pipe.
2 oil cans.
5 chairs, 1 desk.
1 ticket case and press.
1 glass lamp.

1 duplicate and 1 receiving book.
1 collecting and 2 receipt "
1 cash, 1 receipt cash "
2 ticket and 1 memo. "
1½ doz. tic. report
4 " remittance "
2 " fr't forw'd "
1 " small envelopes.
4 qr. writing paper.
1 side do.
1 check, 1 inkstand.
3 doz. blanks.
2 " do.
2 " report freight.
1½ " statistic.
½ " monthly balance.
4 " large envelopes.

SALEM STATION.

6 chairs, 1 desk.
1 pat. ticket case and press.
1 collection book.
1 fr't rec'd "
1 " forw'd "
1 blank book, tic. ac.
10 monthly tic. reports.
18 weekly " "
7 freight statistic "
1 pr. warehouse trucks.
1 oil can (3 gall.)
1 gall. oil.
1 daily cash book.
2 blank receipt.
1 " cash.
100 way-bills, large.
100 " " small.
40 weekly reports, rec'd.
45 " " forw'd.
9 agent's monthly bal. sheets.
1 check book.
1 night light.
1 desk lamp.
½ bottle fluid.

56

LA CROSSE STATION.

2 office desks.
1 copy press.
1 coupon tic. case and stamp.
1 ½ stamp.
1 local ticket case and st'p.
2 book racks.
1 telegraph instrument and fixture.
2 curtains in office.
4 spittoons, 1 carpet.
9 hand lamps, 1 sofa.
3 settees, 5 settees, *gents' room.*
3 washbowls, 8 towels.
6 pails, 8 gall. h. l. oil.
3 oil cans, 3 lamp-fillers.
1 chair, 4 inkstands.
4 rm. bills lading.
1 " " manifests.
¾ " writing paper.
5 stoves and pipe, 1 baggage truck
1 ice box, 5 w. h. "
1 large w. h. scale.
1 platform "
1 bed, bedstead, operator.
1 head light, 6 lantern.
3 side lamps, water cooler.
2 small looking-glasses.
2 tarpolins.
800 envelopes.

LA CROSSE BLACKSMITH SHOP.

3250 lbs. iron.
90 " cast steel.
15 " 3-screw plates.
519 " anvil.
450 " c. i anvil and plates.
60 lbs. hammers.
2 files.
2 vices, 2 bellows.
178 lbs. spring steel.
1044 " bolts, draft way.
132 " c s. punches.
13 " 24-screw taps.
400 " tongs and bottom swedges.
18 " pins, mandrils, &c.
5 tons coal.

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1 stamp dates and press, St. Anthony.
1 " " half stamp press, Stillwater.
1 " date and press, and half stamp, St. Paul.
1 h'lf press. 1 large ticket case, 1 stove and pipe, 2 chairs.
1 counter railing, 1 water pot, inkstand, and 5 books.
1 small tic. case.

HASTINGS.

1 stamp date and press, 1 hf. stamp.

PRESCOTT.

1 stamp dates and press, 1 hlf. stamp.

RED WING.

1 ticket case, stamp, dates, and pads, 1 ½ stamp.

LAKE CITY.

1 stamp dates, 1 press, 1 hlf. stamp.

57 REED'S LANDING.

1 stamp dates and press, 1 hlf. stamp.

WABASHA.

1 stamp dates and press, 1 half stamp.

WINONA.

1 ticket case, 1 stamp, pads, and do. 1 half stamp.

MINNESKEE.

1 stamp dates and press, 1 small case.

BRANDON.

1 tic. case, stamp, and hlf. do.

WAUPUN.

1 tic. case, 1 stamp, and hlf. stamp.

BERLIN.

1 tic. case, stamp, and hlf. stamp.

RIPON.

1 tic. case, 1 stamp, and hlf. stamp.

Filed June 27, 1860.

And afterwards, to wit, on the 30th day of June, A. D. 1860, came Hans Crocker, the receiver, and filed his report as follows:

Receiver's report.

District court of the U. S. for the district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

To the Hon. Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin.

I avail myself of the first opportunity since entering upon the duties of receiver of the La Crosse and Milwaukee railroad (eastern division) to lay before you the present condition of its affairs, as near as can be ascertained.

This section of the road extends from Milwaukee to Portage City, ninety-five miles, and is subject to the following liabilities:

58 Funded debt.—Consisting of first mortgage, mortgage to the city of Milwaukee, and second mortgage, (so called,) amounting in the aggregate to $2,264,000, subject to an annual charge for interest and sinking fund for the redemption of $500,000 of the first mortgage of $189,980.

Real estate incumbrance.—Upon the depot grounds and buildings at Milwaukee, by way of mortgages and other liens, $34,300.

Right of way.—Thirteen miles unsettled for and remaining to be acquired, estimated cost $15,000.

Fencing.—Thirty-five miles remain to be fenced, at an estimated cost of $23,000.

Buildings needed.—A brick blacksmith shop and fixtures at Milwaukee, estimated to cost $3,000.

Rolling stock.—In August, 1859, Mr. Chamberlain, while in possession of the road, purchased 18 house, freight, and other cars, giving his notes therefor, with a chattel mortgage on the same for the security of the vendor. There remains to be paid three notes, amounting to $9,547 91, and mature severally 18 August, 18 November, 1860, and 18 Feb'y, '61.

Taxes.—In addition to other liens upon depot grounds, above referred to, many of the lots are subject to tax titles, for which, in some cases, deeds have been executed; on others tax certificates are outstanding in the hands of individuals or in the possession of the city and county. The amount required to settle their claim is uncertain.

The amount of these incumbrances and claims upon the income of this section of the road, now due and to become due, before the first day of January, '61, may be summed up as follows:

Interest on funded debt and sinking fund now due.....	$151, 980
Due 1 Sep., '60.....	50, 990
" 1 Nov., '60.....	50, 000
Total int.....	252, 970
Incumbrances on real estate on demand, about.....	26, 000
Right of way, as estimated.....	15, 000
59 Fencing, to be expended during the season.....	23, 000
Rolling stock.—Required to meet payments on rolling stock purchased by Chamberlain.....	6, 200
Blacksmith shop, &c.....	3, 000
In the aggregate.....	326, 170

besides the settlement of tax liens.

Upon some of the mortgages and liens I have already made some payments, in order to obtain time and to save expenses of litigation. The mortgages and liens, to the extent above set forth, must be promptly paid to save the same for the use of the road.

The right of way should be secured without delay. The owners, in many cases, are pressing their claims for damages, and several suits are now pending against the company for this purpose. Under the act of 1858, the owner of the fee can obtain an injunction restraining the running of cars or engines over the land until compensation therefor has been made; claims of this kind can generally be settled on more favorable terms to the company by amicable arrangement than by recourse to the judicial tribunals of the State. No time should be lost in completing the fencing required. By the law of last winter this must be done by April next, or the road will be subjected to damages, resulting from a failure to comply with its terms. As the work cannot be done during the winter, it seems absolutely necessary that it should be commenced without delay. The safety of passengers, the requirements of the law, as well as the interests of the road, require that this work should not be longer delayed. I beg leave to call your attention to the accompanying letter of E. H. Goodrich, the manager of the road, as to the probable net earnings from the 1st of July to the 1st of January, and also to the suggestions he makes relative to an additional equipment of the road.

60 It is evident that it will not be in my power, out of the earnings of the road applicable to this division for the present year, to meet all

the demands that will be made upon me, and to pay the interest due and to become due up to the 1st of January next. In making this exhibit of the condition of the road I have not deemed it necessary to notice the claim of Mr. Chamberlain, or other judgment creditors of the company, but have confined myself to that class of indebtedness secured by mortgage or mechanics' lien, and to such obligations as the road is bound to assume. In view of the foregoing facts and suggestions, I respectfully ask that an order may be made authorizing me, out of the net earnings of the road, to discharge the mortgages and liens upon the depot grounds and buildings, and also the notes above referred to, of Mr. Chamberlain, as they become due; also to acquire and pay for the right of way, and to construct so much fencing as may be deemed necessary during the season; and also to purchase three locomotive-engines and fifty house-freight cars, as recommended by Mr. Goodrich; also to discharge the tax liens upon the depot grounds. All these I deem necessary to protect the property of the road, and to promote its permanent interests.

Very respectfully,

H. CROCKER, *Receiver.*

Milwaukee, 30 June, 1860.

MILWAUKEE, Wis., *June* 27, 1860.

H. CROCKER, Esq., *Receiver.*

DEAR SIR: The earnings of the La Crosse and Milwaukee railroad from July to December, 1859, both inclusive, were $422, 677 86
Operating expenses for same time 208, 386 40

Leaving net 214, 291 46

Judging from the increase of earnings from January 1 to June 1, 1860, over the amount earned for same period of time in 1859, (which are
61 ($41, 162 17,) and from the increased amount of land under cultivation in the immediate vicinity of the road, together with the present favorable indications of an abundant harvest, I estimate that the earnings from July to December, inclusive, for 1860, will exceed those of 1859, for the same time, in the sum of $65,000 00, making the whole earnings for the last six months for the present year $487, 677 86
Deduct, for operating expenses 243, 838 93

Leaving net 243, 838 93

If three locomotive-engines and fifty box-freight cars could be placed upon the road ready for service before the commencement of the fall business, I have no doubt of the earnings of the road being increased during the present year over the foregoing estimate in an amount sufficient to pay the whole cost of such engines and cars—say, $54,000 00—provided the business proves as good as present appearances indicate.

Respectfully, &c.,

(Signed) EDWIN H. GOODRICH, *Manager.*

Filed June 30, 1860.

And afterwards, to wit, on the 7th day of July, A. D. 1860, came Hans Crocker, the receiver, and made and filed in this cause a printed exhibit as follows:

63 RECEIVER'S OFFICE OF THE LA CROSSE AND MILWAUKEE RAILROAD,
July 2d, 1860.

Exhibit of the present condition of the La Crosse and Milwaukee Railroad Co.

EASTERN DIVISION.

This section of the road, extending from Milwaukee to Portage City, 95 miles, is subject to the following liabilities, viz:

Funded Debt.—Consisting of first mortgage, mortgage to the city of Milwaukee, and the second mortgage, so called, amounting in the aggregate to $2,264, 000, and subject to an annual charge of $189,980 for interest and sinking fund for the redemption of $500,000 of the first mortgage bonds.

Real estate incumbrances.—Upon the depot grounds and buildings at Milwaukee, there are outstanding mortgages and mechanics' liens amounting in the aggregate to $34,300.

Right of way.—Thirteen miles unsettled for, and remaining to be acquired; estimated cost $15,000.

Fencing.—Thirty-five miles remain to be fenced, at an estimated cost of $23,000.

Buildings needed.—A brick blacksmith shop at Milwaukee and fixtures; estimated cost $3,000.

Due on rolling stock.—In August, '59, Mr. Chamberlain, while in possession of the road, purchased 18 house, freight, and other cars, giving his note therefor, secured by a chattel mortgage upon the cars purchased. There remain to be paid on this purchase, three notes amounting to $9,547 91, which severally mature August 18th, November 18th, 1860, and February 18th, 1861.

Taxes.—In addition to other liens upon depot grounds, many of the lots in Milwaukee are subject to taxes and tax titles. The amount necessary to settle these claims is uncertain. . .

The amount of these incumbrances and claims upon the income of this section of the road, now due and to become due before the first of January, 1861, may be summed up as follows:

The interest and sinking fund now in arrears amounts to $151,980, and is payable in the following order, viz:

1st. Sinking fund on 1st mortgage, Nov. 1st, 1859	$12, 000
2d. Interest on 1st mortgage, due May 1, 1860	38, 000
3d. Interest on city of Milwaukee, bonds, Sept. 1, '59	10, 990
4th. Interest on same, March 1st, 1860	10, 990
5th. Interest on 2d mortgage, due Sept. 1st., '59	40, 000
6th. Interest on same, due March 1, 1860	40, 000
	151, 980

(It is probable that the sinking fund may be allowed to remain unpaid until the city interest is paid.)

Interest due Sept. 1st, 1860	$50, 990	
Do. do. Nov. 1st, 1860	38, 000	
Sinking fund	12, 000	
		$252, 970
Incumbrances on real estate now due	26, 000	
Right of way, as estimated	15, 000	
Fencing	23, 000	
Amount due on Chamberlain's notes, payable this year	6, 200	
Blacksmith shop	3, 000	
		73, 200
Total, besides tax liens and charges		326, 170

WESTERN DIVISION.

Extending from Portage City to La Crosse, 105 miles. It is operated in connection with the eastern division as one road, and is subject to the following charges and incumbrances, viz:

64 Funded debt.—Consisting of first and second mortgages, amounting in the aggregate to $4,367,500, with an annual interest of $309,400, of which there is now in arrear the sum of $630,500.

Real estate and depot grounds.—At La Crosse the depot grounds and buildings stand in the name of Selah Chamberlain, and mechanics' liens exist upon depot buildings at other stations on the line of this division of the road. To acquire title to the grounds and buildings at La Crosse, and to extinguish the other liens, will require $17,000.

Right of way.—Twenty-two miles of right of way yet to be secured on this division, will require from $15,000 to $25,000.

Fencing.—No fencing has yet been done on this division. It is estimated that the entire line from Portage City to La Crosse will cost $67,200.

The incumbrances and liabilities on this division due and to become due up to 1st January, '61, are as follows:

Interest in arrear	$630, 500	
Interest due 1st August, '60, on 1st mortgage	140, 000	
Interest due 1st October, '60, 2d mortgage	14, 700	
		$785, 200
Right of way, estimated, say	20, 000	
Depot grounds and buildings	17, 000	
Fencing, 105 miles	67, 200	
		104, 200
Total		889, 400

Looking to the future operations of the road as a complete connected line it is proper to state that in addition to the foregoing claims and liabilities, it is necessary that additional rolling stock should be procured without delay, the present equipment being inadequate to the business of the road. It now consists of 23 locomotives; 222 house freight cars; 17 first-class and 2 second-class passenger cars, and 108 platform cars. The Milwaukee and Mississippi road, only 34 miles longer than the La Crosse and Milwaukee, has 32 first-class and 11 second-class locomotives; 30 first-class and 3 second-class passenger cars; 411 house freight and 107 platform cars; being nearly double the equipment possessed by this road. It is true, that a large amount of freight was carried over this road, during the past year, with the present equipment, men and rolling stock, being employed day and night, during the heavy business months of the year. More than two-thirds of the grain transported over this road in '59 was carried during the months of September, October, and November. An equipment which might be ample if the business was equally distributed throughout the year, is entirely inadequate to the wants of the road during those months when business is most active. Farmers and dealers are desirous to have their produce forwarded to the eastern market before the close of navigation; consequently a heavy business is thrown upon the road during the fall months, which, with an inadequate equipment, must be done at great expense, or it must seek some other channel. Should the grain crop of Wisconsin and Minnesota prove as abundant as it now promises, the tonnage to be moved by this road will be materially

increased over that of the past year, and with the present equipment it will be impossible to do the business which naturally belongs to the road. Those best acquainted with the prospective wants of the road estimate that a proper equipment of rolling stock for the prompt and economical transportation of freight and passengers will require 10 locomotives and 200 house freight cars, in addition to those now in use on the road. Mr. Goodrich, the superintendent, while freely concurring in the above estimate, thinks that for the present year three additional locomotives and fifty freight cars will enable the road to perform the service required.

The estimated cost of this additional equipment is $54,000.

The estimate for right of way I believe to be ample; but it may be materially increased by the exorbitant demands of owners or the liberality of jurors. At whatever sacrifice, the right of way must be secured, as the laws of the State authorize injunctions to restrain the running of cars or engines over the lands taken, until compensation is made therefor.

An act passed at the last session of the legislature requires all railroads to be fenced by the first of April next, and they are rendered liable for all damages to persons or property, by reason of such fences not being constructed as required by that act.

The mortgages upon depot grounds, and the mechanics' liens upon buildings, should be paid promptly, in order to save expense, and to save the property for the use of the road.

The gross receipts from July 1, '59, to Jan. 1, '60, were $422,677 86. For the corresponding months of the present year they are estimated at $487,677 86, and should the hopes now entertained of the incoming crop be realized, I have no doubt of an increase in gross earnings, during the present year, by the addition of the equipments suggested, equal to the cost of the same.

It will be seen that the claims, liabilities, and expenditures estimated for the eastern division, exclusive of rolling stock, arrears of interest, and the amount to become due for cars purchased by Mr. Chamberlain, which should be considered as the common property of both divisions, amount to $67,000.

The necessary outlays for the western division, exclusive of rolling stock and claims for interest, amount to $104,200. The net earnings for the whole road for the remainder of the year will probably not exceed $250,000, and the portion applicable to the western division will not exceed $60,000, if the claim made by the bond-holders of the eastern division to the exclusive right to the rolling stock is well founded.

The two divisions are operated as one road; but a detailed account is kept of the business properly belonging to each division, though no distribution of net earnings can be made until the question of the ownership of the rolling stock is first determined.

65 I have deemed it my duty to submit the foregoing exhibit in order that the bond-holders and others interested may know the present condition of the road. I have not deemed it necessary to refer to the claims of Mr. Chamberlain or other creditors, but have confined myself to that class of indebtedness secured by mortgage and mechanics' liens, and to such obligations as the laws referred to compel the managers of the road to regard.

My powers as receiver are limited, and it is questionable how far the court from which I receive my appointment will feel warranted in authorizing the expenditures I have recommended. They are all necessary to the completion of the road, and a compliance with the law of the State, and unless made without delay serious loss may result to the road. If made, the earnings for the present year must be diverted from the interest account, and if the whole of the estimated expenditure is made for the western division, it will exceed the net earnings belonging to that division.

I am clearly of opinion that true policy requires that the bond-holders should forego the payment of any interest until all the claims and liabilities are paid, and the road fully completed and equipped.

The embarrassments attending my position as the receiver of a road, which during my official term will not probably earn sufficient to enable me to pay the interest on the funded debt, and discharge the claims and liabilities above set forth, leads me to suggest to the bond-holders and others the necessity of adjusting all matters in controversy between all parties interested in the road in order that it may, at the earliest possible day, pass into the hands of the proper owners.

Proceedings have been commenced to foreclose the second mortgage on the eastern division, and the first and second mortgages on the western division. Creditors, and parties claiming an interest in the road, are resisting these foreclosures. The holders of bonds, under the second mortgage on the western division, are questioning the validity of a portion of the bonds issued under the first mortgage of that division, and a similar question has arisen among the holders of that issue. The determining of these questions by the court will occupy a long time, and involve much expense. In the mean while the interests of the road will suffer from the inability of the receiver to meet all the liabilities and obligations devolving upon the road. I repeat, again, that the interest of the road requires an early settlement of these questions and conflicting rights; a reorganization under the laws of the State, and the formation of a company recognizing the rights of all, according to their respective priorities and equities, which will be enabled successfully to manage this great thoroughfare as one entire line from Milwaukee to La Crosse.

It is proper to say that I have submitted the foregoing exhibit to the judge of the U. S. court, and have asked such order and direction as will enable me to protect the property and promote the interests of the road.

H. CROCKER, *Receiver.*

OFFICE OF THE TRUSTEES OF THE SECOND MORTGAGE BOND-HOLDERS OF THE LA CROSSE AND MILWAUKEE RAILROAD,
Milwaukee, July 3, 1860.

The foregoing exhibits and statements of the liens, claims, liabilities, and wants of the separate divisions of this road, have been carefully prepared and correctly set forth by the receiver.

No person who understands the condition of the road and the extent of these liens and requirements can fail to see that a choice must now be made between purchasing a present income by certain classes of the bond-holders, at the expense of the safety of the property and the future value of the road, and the postponement of their interest for a time, for the purpose of securing their property, adding to the permanent value of their respective securities, and increasing the safety of their future income. This postponement will fall chiefly upon the holders of the city bonds and the second mortgage bonds upon the eastern division; the anticipated earnings from this division being only sufficient to provide the payments upon the same, purchase rolling stock, and meet the interest upon the first mortgage bonds. I concur entirely in Mr. Crocker's views as to the propriety of the expenditures upon the eastern division, for which he asks the authority of the court. The probable deficiency in the earnings of the western division, to meet the absolute necessities of that section of the road is a subject which commends itself to the consideration of the land grant bond-holders whose permanent interests are involved in securing the real estate now used for depot purposes on that line, the right of way, and the fencing of the track, according to the requirements of law.

The legal complications which are now developing themselves in the opposition to the pending foreclosures give very great weight to the suggestions of the receiver, that the several interests in both divisions should come together and settle their equities and claims by amicable arrangement.

Delays interposed and the disadvantages under which a receiver must manage such important operations, will soon destroy all value which creditors outside of the mortgages might secure, even if the mortgagees themselves do not hazard something of the value of their securities from the same causes. I recommend that measures be taken to bring all classes interested to an early amicable settlement of their respective claims, in order of merit and equity.

P. DOW,
Attorney for the trustees second mortgage.

66 Filed July 7th, 1860.

67 *Order appointing receiver modified.*

And same day, (July 7th, 1860,) came the parties by their counsel, and also came Hans Crocker, the receiver, and made his report, from which it appears, among other things, that there are mechanics' liens and mortgages upon the depot buildings and depot grounds of said road; that thirty-five miles of right of way remain to be secured and paid for; that one hundred and forty miles of fencing remain to be completed; that there is due for rolling stock purchased by S. Chamberlain, while in the possession of the road, and mortgaged by him to the vendor, $9,547 91; that the depot grounds are encumbered with taxes and tax deeds; and further that there is an immediate necessity for the purchase of at least three locomotive engines and fifty freight box cars; said report having been submitted by consent, and upon the consideration thereof, it is ordered, adjudged, and decreed by the court, that the order appointing said receiver be, and is hereby, modified, and the court doth now here order and decree in the manner following:

That the said receiver shall have power to bring and maintain any action or actions necessary or proper in order to enable him to execute his duties, which actions or suits may be brought in the name of the La Crosse and Milwaukee Railroad Company; and in like manner he may defend any action or suit affecting the interests of the said company so far as may be necessary to protect the property and interests confided to his care, or may be necessary and proper to enable him to discharge his duties as such receiver. He shall also have power to compromise and settle all suits or actions that have been or may be brought against said company so far as may be necessary to protect the property committed to his care, upon such terms and conditions as to him shall seem most advantageous to said railroad or to said company or other parties interested therein; he shall also have power and is hereby authorized to compromise, settle, and discharge all lawful
68 claims against said company or said road for right of way, liens upon depot grounds or buildings, taxes upon depot grounds and special liens upon the rolling stock in use upon said road, so far as may be necessary to protect the property of said company. He shall also have power to arbitrate or compromise, on such terms as he shall deem most advantageous to the interests of the road, all claims for damages for detention or injury to persons or property arising from running or operating said road. The net earnings of the road shall be applied as follows, as far as may be deemed necessary: to the payment of such sum as shall hereafter become due the State of Wisconsin for license to operate said road by virtue of any law of the State; to the payment of all sums due operatives and employees of the

road, and for materials or supplies furnished said road which have accrued since the first day of April last; but the receiver shall be authorized to pay any proper expenses incurred in the operating or managing of said road previous to that date, provided the same shall not exceed the sum of one thousand dollars; to the payment of such sums as may be necessary to acquire the title to the right of way and depot grounds now used and occupied by the road; to the payment of all sums due or that may become due to connecting roads on freight or passenger account in the ordinary course of business; to the payment of the amount due on three notes given by S. Chamberlain in the month of August, 1859, for part payment on the purchase of freight cars, and which are subject to a chattel mortgage to secure the payment of such notes; to the payment of such expenses as may be incurred in fencing so much of the line of road as the receiver may deem necessary. The said receiver shall have power and authority to purchase such locomotives and freight cars as may be necessary for the business of the road, but not to exceed three locomotives and fifty house freight cars, and at a cost not exceeding fifty-four thousand dollars; and for such portion of the purchase money of such engines and cars as the receiver shall not be able to pay at the time of the purchase or delivery thereof he may execute to the vendor a chattel mortgage thereon to secure the payment of such purchase money in arrear.

The receiver acting in pursuance of this or any former or of any
69 subsequent order or decree hereinafter to be made in good faith with ordinary care and prudence, shall not be individually liable for any breach of contract entered into by him as such receiver, or for any injury to person or property of the parties, or of third persons, or for the faults or negligence of his subordinates; and for his indemnity against or exoneration from any and all such liabilties, should any such occur, the property, money, and affects that shall at any time be in his hands, as such receiver, shall be bound, and may from time to time, as may be necessary, be applied in such manner as the court shall direct.

70 And afterwards, on the 14th day of July, 1860, came Hans Crocker, and filed his report, as receiver, for the month of June, 1860.

Receiver's report.

JUNE, 1860.

D. C. of the U. S. for the district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD Co. and others.

To the Hon. Andrew G. Miller, judge of said court:

I hereby report that the receipts and disbursements of the La Crosse and Milwaukee railroad, from the 11th June, when I entered into possession of the same, to the 30th June, 1860, inclusive, are as follows, viz:

Receipts.

For freight	$19,448 70	
passengers and foreign tickets	10,564 87	
express and miscellaneous	1,057 67	
		$31,071 24

Disbursements.

For advance charges	6,288 40	
bills of supplies	3,248 13	
foreign ticket balances	4,528 88	
right of way, E. div-	25 00	
incumbrances depot grounds, E. div	820 09	
mechanics' liens, west div	300 00	
pay-roll month of May	12,223 64	
pay-roll month of June	520 78	
		27,952 92
Balance on hand		3,118 32

District court of the U. S. for the district of Wisconsin.

Hans Crocker, being duly sworn, on oath saith that the foregoing is a true and accurate statement of the moneys received by him, as receiver of the La Crosse and Milwaukee railroad, from 11 June to 30 June, 1860, inclusive, and also of the disbursements on account of said road for the same time, according to the best of his knowledge, information, and belief.

71

H. CROCKER.

Subscribed and sworn to before me, a notary public, in and for the courts of Milwaukee and State of Wisconsin, this 14 July, 1860.

DWIGHT W. KEYES,
Notary Public, Milwaukee Co., Wis.

And afterwards, on the 14th day of August, 1860, came Hans Crocker, and filed his report, as receiver, for the month of July, 1860.

JULY, 1860.

District court of the U. S. for the district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

To the Hon. A. G. Miller, judge of said court:

I hereby submit my monthly report of the moneys received and disbursed by me, as receiver of the La Crosse and Milwaukee railroad, for the month of July, 1860.

Receipts.

Balance on hand June 30, 1860		3,118 32
For freight		25,189 76
passenger and foreign tickets		27,367 15
freight and miscellaneous matter		954 64
mails		496 53
		57,126 40

Disbursements.

For pay rolls	21,551 30		
supplies	11,862 15		
foreign ticket balances	8,088 70		
incumbrances on real estate, W. div	1,500		
incumbrances on real estate, E. div	2,180 18		
right of way, W. div	350		
72 purchase of rolling stock	10,000		
advance charges	7,799 56		
			63,331 89
Disbursements on receipt			6,205 49

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, on oath saith that the foregoing statement contains a true and accurate account, according to the best of his knowledge, information, and belief, of the receipts and disbursements of the La Crosse and Milwaukee railroad, as received and paid out by him, as receiver of said road, for the month of July, 1860.

H. CROCKER.

Subscribed and sworn to before me this 14th day of August, A. D. 1860.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

And afterwards, on the 19th day of September, 1860, came Hans Crocker, and filed his report, as receiver, for the month of August, 1860.

AUGUST, 1860.

United States district court for the district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD CO. and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my monthly statement of the moneys received and disbursed by me, as receiver of the La Crosse and Milwaukee railroad, for the month of August, 1860.

H. CROCKER, *Receiver.*

Receipts.

For freight	25,024 09		
passengers tickets	27,466 11		
express and miscellaneous	1,127 69		
mails	8,093 54		
			61,711 43

73 *Disbursements.*

Overpaid for the month of July	6,205 49		
Pay-rolls	19,326		
Supplies	8,046		
Ticket balances	12,597 44		
Advanced charges	8,550 96		
Incumbrances on real estate, E. div	3,000		
Incumbrances on real estate, W. div	508 66		
Right of way, E. div	430		
Right of way, W. div	775 09		
Balance on hand	2,271 79		
			61,711 43

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, on oath saith that the foregoing is a correct statement, according to the best of his information and belief, of the moneys received and disbursed by him, as receiver of the La Crosse and Milwaukee railroad, for the month of August, 1860.

H. CROCKER.

Sworn to before me this 19th day of September, A. D. 1860.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

And afterwards, on the 15th day of October, 1860, came Hans Crocker, and made his report, as receiver, for the month of September, 1860.

SEPTEMBER, 1860.

District court of U. S., district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD CO. and others.

To the Hon. A. G. Miller:

I herewith submit the monthly statement of the moneys received and disbursed by me, as receiver of the La Crosse and Milwaukee railroad, for the month of September, 1860.

74 *Receipts.*

Bal. on hand, Aug. 31, '60		$2, 271 79
From freight		92, 483 35
passengers and foreign tickets		33, 012 48
express and miscellaneous		829 04
		128, 596 66

Disbursements.

For pay-rolls	$30, 966 81	
bills of supplies	19, 339 90	
ticket balances	6, 738 75	
advanced charges	25, 425 93	
incumbrances on real estate, east div.	2, 958 72	
do. " west div.	140 00	
right of way east div.	425 00	
do. west "	4, 583 08	
rolling stock	8, 175 93	
bal. on hand, Sept. 29, '60	29, 842 54	
		128, 596 66

STATE OF WISCONSIN,
Milwaukee Co., ss:

Hans Crocker, being duly sworn, on oath saith, that the forgoing statement of the receipts and disbursements by him, as receiver of the La Crosse and Milwaukee railroad, for the month of September, 1860, is true, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 13th day of October, A. D. 1860.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

And afterwards, on the 2d day of November, 1860, came the said complainant, by his said solicitor, and filed his replication to the answer of Selah Chamberlain, as follows:

Replication of Sebre Howard.—Replication.

District court of the United States, Wisconsin district.

SEBRE HOWARD
vs.
75 THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, and SELAH CHAMBERLAIN.

This repliant, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage which may be had or taken to the answer of the defendant, Selah Chamberlain, for replication thereunto, says, that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing, whatever, in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays, as in and by his said bill he has already prayed.

LEVI HUBBELL,
Sol's for Complainant.

Receiver's report.

And afterwards, on the 12th November, 1860, came Hans Crocker, and filed his report, as receiver, for the month of October, 1860.

OCTOBER, 1860.

District court of the U. S., district of Wisconsin.

SEBRE HOWARD
vs.
LA CROSSE & MILWAUKEE RAILROAD Co. and others.

To the Hon. Andrew G. Miller, judge of said court:

I herewith submit my account of receipts and disbursements, as
76 receiver of the La Crosse and Milwaukee railroad, for the month of October, 1860.

H. CROCKER, *Rec.*

Receipts.

Bal. on hand Oct. 1, 1860	$29,842 54
From freight	150,005 42
passengers and foreign tickets	38,065 42
expresses and miscellaneous	645 29
	218,558 67

Disbursements.

For pay-rolls	$23,000 00	
bills of supplies	21,729 97	
ticket balances	12,828 86	
advanced charges	37,076 73	
incumbrances on real estate, east div.	13,116 29	
do. west "	160 00	
right of way east "	176 50	
do. west "	464 25	
rolling stock	18,387 53	
taxes	157 00	
interest on 1st mort. bonds	15,089 40	
bal. on hand Oct. 31, '60	76,372 14	
		218,558 67

STATE OF WISCONSIN,
Milwaukee County, ss:

Hans Crocker, being duly sworn, on oath saith, that the foregoing is a true statement of the receipts and disbursements by him, as receiver of the La Crosse and Milwaukee railroad, during the month of October, 1860, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 12th day of November, A. D. 1860.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

77 And afterwards, on the 21st day of December, 1860, came Hans Crocker, and made his report, as receiver, for the month of November, 1860.

NOVEMBER, 1860.

District court of U. S., district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of receipts and disbursements, as receiver of the La Crosse and Mil. R., for November, 1860.

H. CROCKER, *Receiver.*

Received.

Balance on hand Nov. 1, 1860	$76,372 14	
Freight	108,748 16	
Passenger and foreign tickets	36,119 98	
Express and miscellaneous	1,002 00	
		222,242 28

Disbursements.

Pay-rolls	$26,167 25	
Bills for material	25,291 85	
Ticket balances	9,459 16	
Advanced charges on freight	16,981 67	
Incumbrances on real estate, e. div	8,749 53	
Do. west "	300 00	
Right of way east "	14 50	
Do. west "	1,920 00	
Rolling stock	9,381 59	
Taxes	69 54	
Miscellaneous	1,560 99	
Coupons on 1st mort. bonds	17,459 70	
Balance on hand	104,886 50	
		222,242 28

STATE OF WISCONSIN,
Milwaukee County, ss:

Hans Crocker, being duly sworn, on oath saith, that the foregoing
78 is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad, according to the best of his knowledge, information, and belief, for the month of November, 1860.

H. CROCKER.

Subscribed and sworn to before me this 20 day of December, 1860.
A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

And afterwards, on the 22d day of January, 1861, came Hans Crocker, and filed his report, as receiver, for the month of December, 1860.

DECEMBER, 1860.

District court of the U. S., district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD CO. and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for December, 1860.

H. CROCKER, *Receiver.*

Receipts.

From freight	$34,607 83	
passengers and foreign tickets	25,084 38	
Post Office Department	6,102 00	
express and miscellaneous	1,366 18	
balance on hand Dec. 1, 1860	104,886 50	
		172,046 89

Disbursements.

For pay-rolls	$22,605	05	
bills of supplies	13,592	77	
ticket balances	6,620	21	
advanced charges	9,903	35	
incumbrances, east div	1,181	92	
" west "	300	00	
rolling stock	14,564	17	
79 1st mortgage bond coupons	1,830	60	
miscellaneous expenses	2,623	48	
balance on hand Dec. 31, '60	97,445	34	
			172,046 89

DISTRICT OF WISCONSIN,
Milwaukee County, ss:

Hans Crocker, being duly sworn, on oath saith, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad.

H. CROCKER.

for the month of December, 1860, according to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 21st day of Jan'y, A. D. 1860.

A. G. MILLER, JR,
Not. Pub., Mil. Co., Wis.

Rule for commission.

And afterwards, January 24, 1861, came the complainant, by his solicitor, and entered in the order and rule book a rule for a commission to issue to Francis Bloodgood, esq., of Milwaukee, Wisconsin, to take the depositions of Byron Kilbourn, Moses Kneeland, E. H. Goodrich, Dwight W. Keyes, and E. C. Jennings, and filed interrogatories to be answered to said commission.

Receiver's report.

And afterwards, to wit, February 19, 1861, came Hans Crocker, and filed his report, as receiver, for the month of January, 1861.

JANUARY, 1861.

District court of U. S., district of Wisconsin.

SEBRE HOWARD
vs.
LA CROSSE & MILWAUKEE RAILROAD Co. and others.

80 To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of receipts and disbursements, as receiver of the La Crosse and Mil. R., for the month of January, 1861.

H. CROCKER, *Receiver.*

Receipts.

From freight	$46,749	29	
passengers and foreign tickets	16,772	52	
Post Office Depart	47	68	
express and miscellaneous	674	19	
On hand Jan'y 1, 1861	97,445	34	
			161,689 02

Disbursements.

For pay-rolls	$18,464 25	
bills of supplies	12,301 18	
foreign tickets balances	11,299 38	
advanced charges	2,941 67	
incumbrances on real estate, east div	2,695 09	
right of way " "	783 10	
do. west "	195 00	
coupons 1st mortg'ge bonds	375 60	
" city of Mil. "	3,980 46	
Balance on hand Feb. 1, 1861	108,653 29	
		161,689 02

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, on oath saith, that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad, for the month of January, 1861, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to, before me, this 18th day of February, 1861.

A. G. MILLER, JR,
Not. Pub., Mil. Co., Wis.

81 *Rule.*

And afterwards, on the 5th day of March, 1861, came the defendant, Selah Chamberlain, by his solicitors, and filed objections to interrogatories, and also filed cross-interrogatories to be annexed to said commission, and named Winfield Smith as commissioner.

And afterwards, on the 8th day of March, 1861, commission was issued.

82 *Receiver's report.*

And afterwards, on the eleventh day of March, 1861, came Hans Crocker, esq., and filed his report as receiver, for the month of February, 1861, as follows:

FEBRUARY, 1861.

District court of the U. S., district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of receipts and disbursements as receiver of the La Crosse and Mil. R., for the month of February, 1861.

H. CROCKER, *Receiver.*

Receipts.

From freight	$34,748 36	
passengers and foreign tickets	14,291 35	
express and miscellaneous	1,215 92	
on hand Feb. 1, '61	108,653 29	
		153,908 92

Disbursements.

For pay-rolls	$19,631 20	
bills of supplies	12,288 68	
foreign tickets	3,398 36	
advanced charges	4,875 96	
right of way, east div.	735 00	
do. west "	438 04	
La Crosse depot extension	645 81	
fencing	80 00	
State tax	7,564 76	
legal expenses	1,094 91	
rolling stock	3,427 91	
Balance on hand March 1, '61	104,728 29	
		158,908 92

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, on oath saith, that the foregoing is a true and accurate statement of his receipts and disbursements as receiver *as receiver* of the La C. and Mil. R., for the month of February, 1861,
83 according to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to, before me, this 11 day of March, 1861.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed March 11, 1861.

And afterwards, on the 17th day of April, 1861, came Hans Crocker, receiver, and made his report for the month of March, 1861, as follows:

MARCH, 1861.

District court of the U. S., district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of receipts and disbursements as receiver of the La C. and Mil. R. for the month of March, 1861.

H. CROCKER, *Rec.*

Receipts.

Balance on hand March 1, 1861	$104,728 29	
From freight	42,278 64	
passengers and foreign tickets	18,311 85	
mails	3,095 41	
express and miscellaneous	1,332 34	
		169,746 53

Disbursements.

For pay-rolls	$20,674	45	
bills of supplies	17,649	90	
foreign ticket balances	5,783	41	
84 advanced charges	6,845	49	
right of way, east div	166	86	
do. west "	438	24	
La Crosse elevator	3,711	83	
fencing	1,170	54	
discount and commission	542	03	
coupons 1st mortgage bonds	33,586	40	
" city of Mil. "	12,592	00	
Bal. on hand carried to next ac.	66,585	38	
			169,746 53

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, on oath saith, that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of March, 1861, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to, before me, this 17 day of April, 1861.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed April 17, 1861.

And afterwards, on the 13th day of May, 1861, came Hans Crocker, and filed his report as receiver, for the month of April, 1861.

APRIL, 1861.

District court of the U. S., district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

To the Hon. A. G. Miller, judge of said court:

85 I herewith submit my report of receipts and disbursements for April, 1861.

H. CROCKER, *Rec.*

Receipts.

From freight	$65,740	66	
passengers and foreign tick.	23,495	07	
mails	827	15	
express and miscellaneous	1,126	73	
On hand April 1, 1861	66,585	38	
			$157,774 99

Disbursements.

For pay-rolls	$22,387 96	
bills of supplies	20,733 54	
foreign ticket balances	3,446 59	
advanced charges	26,117 69	
incumbrances on real estate, east div.	9 19	
right of way, east div.	90 00	
" " west "	16 50	
La Crosse elevator	1,818 24	
fencing	400 00	
Cleveland judgment	28,801 92	
discount and commission	75 01	
coupons, 1st mort. bonds	525 60	
" city Mil. "	1,782 28	
		$106,204 52
Bal. on hand to next ac't		51,570 47
		157,774 99

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn on oath, says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of April, 1861, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 11th day of May, 1861.

A. G. MILLER, JR.,
Notary Pub., Mil. Co., Wis.

Filed May 13, 1861.

86 And afterwards, on the 15th day of June, 1861, came Hans Crocker and filed his report as receiver for the month of May, 1861.

MAY, 1861.

District court of the U. S., district of Wisconsin.

SEBRE HOWARD
vs.
LA CROSSE & MILWAUKEE RAILROAD Co. and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse & Milwaukee R. R. for the month of May 1861.

H. CROCKER, *Receiver.*

Receipts.

From freight	$112,711 56	
passengers and for tickets	23,750 44	
mails	887 87	
express and miscellanous	594 83	
Bal. on hand May 1, 1861	51,570 47	
		$189,515 17

Disbursements.

For pay-rolls	$24,392 00	
bills of supplies	26,505 04	
foreign ticket ac	3,129 12	
advanced charges	19,231 09	
incumbrances on real estate, e. div	825 30	
right of way, east div	408 30	
do west "	165 00	
La Crosse elevator	414 23	
fencing	525 00	
on ac. interest on land grant mort	2,500 00	
" " " second "	2,500 00	
L. Ward, receiver	295 12	
interest, 1st mort. bonds	4,616 20	
" city of Mil. "	1,255 97	
87 discount and commission	129 40	
Bal. to next ac	102,623 70	
		$189,515 17

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn on oath, saith that the foregoing, to the best of his knowledge, information, and belief, is a true and accurate statement of his receipts and disbursements as receiver of the La C. & Mil. R. R. for the month of May, 1861.

H. CROCKER.

Subscribed and sworn to before me this 15th day of June, A. D. 1861.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed June 15, 1861.

And afterwards, on the 13th day of July, 1861, came Hans Crocker and filed his report, as receiver, for the month of June, 1861.

JUNE, 1861.

District court of the U. S., district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver for the month of June, 1861.

H. CROCKER, *Rec.*

Received.

From freight	$102,957 17	
passengers and foreign tickets	32,079 65	
express and miscellaneous	4,455 68	
Balance on hand June 1, 1861	102,623 70	
		$242,116 20

Disbursements.

	For pay-rolls	$30, 470 00	
88	" bills of supplies	38, 546 79	
	" foreign balances	6, 518 48	
	For advanced charges	21, 788 10	
	right of way, east div.	1, 542 00	
	" " west "	100 00	
	La Crosse elevator	361 46	
	fencing	1, 933 90	
	law expenses	26 94	
	cattle killed during Chamberlain's administration	700 00	
	dist. commission and exchange	1, 000 55	
	coupons, 1st mortgage bonds	2, 465 60	
	" city of Milwaukee "	3, 065 25	
	Balance on hand to next ac.	133, 597 13	
			$242, 116 20

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn on oath, saith that the foregoing is a true and accurate statement of the receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of June, 1861, according to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 12th day of July, 1861.

A. G. MILLER, JR.,
Not. Pub., Mil. Co., Wis.

Filed July 13, 1861.

And afterwards, on the 14th day of August, 1861, came Hans Crocker and filed his report as receiver for the month of July, 1861.

JULY, 1861.

District court of the United States, district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD CO. and others.

89 To the Hon. A. G. Miller, judge of the said court:

I herewith submit my report as receiver for the month of July, 1861.

H. CROCKER, *Rec.*

Receipts.

Balance on hand July 1, 1861	133, 597 13	
From freight	88, 319 18	
passengers and for'gn tickets	27, 220 11	
express and miscellaneous	3, 153 34	
		252, 289 76

Disbursements.

For pay-rolls	32, 228 25	
bills supplies	26, 605 62	
foreign balances and adv. ch'gs	37, 620 42	
right of way, east div	135 00	
fencing	859 44	
Cleveland judgment	30, 000 00	
land grant m'tge	20, 000 00	
L. Ward, rec'r, ac	4, 953 02	
rolling stock	4, 750 00	
exchange ac	832 89	
city Milwaukee bond, coupons	4, 079 07	
1st m'tge bond, coupons	2, 429 81	
real estate bond, coupons	127 20	
Balance to next ac	87, 669 04	
		252, 289 76

STATE OF WISCONSIN, *Milwaukee county, ss :*

Hans Crocker, being duly sworn, saith that the foregoing is a true and accurate statement of his receipts and disbursements as the receiver of the La Crosse and Milwaukee railroad for the month of July, 1861, to the best of knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 14th day of August, 1861.

A. G. MILLER, JR.,
Not. Public Mil. Co., Wis.

90 Filed August 14, 1861.

And afterwards, on the 16th day of September, 1861, came Hans Crocker and filed his report as receiver for the month of August, 1861.

AUGUST, 1861.

District court of the United States, district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE R. R. COMPANY and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of August, 1861.

H. CROCKER, *Rec.*

Receipts.

From freight	65, 835 33	
passenger and foreign tickets	22, 699 44	
mails	4, 739 03	
express and miscellaneous	1, 511 75	
Balance on hand Aug't, 1861	87, 669 04	
		182, 454 59

Disbursements.

For pay-rolls	33, 127 10	
bills of supplies	36, 426 18	
foreign ticket ac	6, 406 28	
advance charges	10, 311 84	
incumbrances east'n division	200 00	
right of way " "	404 12	
" " west "	196 00	
fencing	2, 526 64	
rolling stock	28, 804 85	
taxes (special)	226 38	
exchange, dis't, and commission	3, 624 82	
coupons, 1st mortgage	29, 431 12	
" city Milw	14, 988 70	
Balance on hand Sep. 1, 1861	15, 780 56	
		182, 454 59

91 STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, says the foregoing statement of receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of August, 1861, is true and correct, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 16th day of September, 1861.

A. G. MILLER, JR.,
Not. Pub. Mil. Co., Wis.

Filed Sept. 16, 1861.

And afterwards, on the 9th day of October, 1861, came Hans Crocker and filed his report as receiver for the month of September, 1861.

SEPTEMBER, 1861.

District court of the United States, district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report of receipts and disbursements for September 1861.

H. CROCKER.

Receipts.

From freight	94, 133 13	
passenger and foreign tickets	30, 113 29	
mails	4, 445 86	
express and miscellaneous	1, 247 15	
On hand Sept. 1, 1861	15, 780 56	
		145, 719 99

Disbursements.

For pay-rolls	35,757 09	
bills of supplies	31,613 12	
advance charges	19,049 28	
foreign ticket ac	7,414 48	
92 right of way, east div	735 36	
" " west "	46 50	
fencing	504 47	
int. 1st m'tge bond	5,847 60	
int. city of Mil	6,270 78	
L. Ward, receiver, ac	3,637 73	
int. land grant bond	6,500 00	
rolling stock	15,748 40	
Bal. on hand October 1, 1861	12,595 18	
		142,719 99

STATE OF WISCONSIN, *Milwaukee county, ss:*

Hans Crocker, being duly sworn, says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Mil. R. R., for the month of Sept., 1861, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 9th day of October, A. D. 1861.

A. G. MILLER, JR.,
Not. Pub. Mil. Co., Wis.

Filed October 9, 1861.

And afterwards, on the 19th day of November, 1861, came Hans Crocker and filed his report as receiver for the month of October, 1861.

OCTOBER, 1861.

District court of the U. S., district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD and others.

To the Hon. A. G. Miller, judge of said court:

93 I herewith submit my report as receiver of the receipts and disbursements for Oct., 1861.

H. CROCKER.

Receipts.

On hand Oct. 1, 1861	$12,595 18
From freight	167,855 57
passengers and foreign tickets	38,903 63
mails	638 68
express and miscellaneous	1,419 11
	$221,412 47

Disbursements.

For pay-rolls	$32, 981	38
bills of supplies	41, 003	14
advance charges	31, 321	25
foreign ticket ac't	9, 539	94
right of way, east div	1, 066	68
" " west "	93	00
fencing	3, 105	70
rolling-stock	9, 170	80
for land-grant interest	1, 515	00
exchange, dis't, and com	27	44
city Milwaukee bond coupons	4, 524	78
1st mortgage bond coupons	68	68
L. Ward, receiver ac't	7, 239	48
Balance on hand Nov. 1, '61	72, 955	88
		$221, 412 47

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposes and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad for the month of October, 1861, to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this eighteenth day of November, A. D. 1861.

A. G. MILLER, JR.,
Not'y Pub. Mil. Co. Wis.

94 And afterwards, on the 9th day of December, 1861, came Hans Crocker, and filed his report as receiver for the month of November, 1861.

November, 1861.

District court of the United States, district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE R. R. COMPANY, and others.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver, showing the receipts and disbursements for the month of November, 1861.

H. CROCKER, *Rec.*

Receipts.

Balance on hand, November 1, '61	$72, 955	88
From freight	122, 776	43
from passengers and foreign tickets	34, 128	25
mails	8	69
express and miscellaneous	2, 411	21
	$232, 280	46

Disbursements.

For pay-rolls	$39,604 36	
bills supplies	27,253 82	
foreign ticket ac't	6,707 19	
advanced charges	18,869 14	
R. of way E. div	419 90	
" " W. "	109 64	
fencing	3,197 02	
land-grant mortgage	11,985 00	
sinking fund	12,000 00	
L. Ward, receiver ac't	9,729 22	
Helfenstein mortgage	3,451 33	
fire insurance	2,219 98	
Chicago & N. Western r'y ac't	3,393 88	
exchange, dis't, and com	122 53	
coupons, 1st mortgage	33,290 70	
" city of Mil	1,838 18	
Bal. on hand Dec. 1, '61	58,088 57	
		$232,280 46

95 STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, says that the foregoing is a true and accurate account of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of November, A. D. 1861, according to the best of his knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me, this 9th day of November, A. D. 1861.

A. G. MILLER, JR.,
Not'y Pub., Mil. Co., Wis.

And afterwards, on the 22d day of January, 1862, came Hans Crocker, and filed his report for the month of December, 1861.

December, 1861.

District court of the United States, district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE R. R. Co. } *ss:*

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver, showing my receipts and disbursements for the month of December, 1861.

H. CROCKER, *Rec.*

Receipts.

For freight	$70,950 12	
passengers and foreign tickets	31,947 95	
express and miscellaneous	2,256 45	
mails	4,390 13	
telegraph	40	
Bal. on hand Dec. 1, '61	58,088 57	
		$167,633 62

Disbursements.

For pay-rolls	$34, 612 20	
bills supplies	47, 752 85	
foreign ticket ac't	8, 635 51	
For advance charges	6, 673 95	
96 " incumbrances, E. division	71 70	
" right of way, East div	20 00	
For right of way, West div	95 37	
fencing	78 00	
L. Ward, receiver ac't	4, 696 00	
Chicago and N. W. r'y ac't	2, 288 86	
legal expenses	299 40	
exchange, discount, and com	201 05	
1st mortgage bond coupons	1, 696 80	
city of Milwaukee bond coupons	866 07	
Bal. on hand Jan'y 1, '61	59, 645 86	
		$167, 633 62

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad, for the month of December, 1861, according to his best knowledge, information, and belief.

Subscribed and sworn to before me, this twenty-first day of January, A. D. 1862.

J. A. PIRIE,
Notary Public, Milwaukee Co.

Of the above receipts $17, 525 $\frac{62}{00}$, were received after the 31st day of December, but earned in December.

H. CROCKER.

And afterwards, on the 25th day of February, 1862, came Hans Crocker, and filed his report as receiver, for the month of January, 1862.

January, 1862.

District court of United States, district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE R. R. } *ss:*

To the Hon. A. G. Miller, judge of said court:

97 I herewith submit my report as receiver of the La Cross and Milwaukee railroad, showing my receipts and disbursements for the month of January, 1862.

H. CROCKER, *Receiver.*

Receipts.

From freights	39, 067 60
passengers and foreign tickets	8, 553 15
express and miscellaneous	1, 031 29
mails	1, 428 02
Bal. on hand Jan'y 1st, 1862	59, 645 86
	109, 725 92

Disbursements.

For pay-rolls	26,258 30	
bills supplies	27,404 87	
foreign tickets	5,826 74	
advance charges	2,486 45	
R. of way, east div	4,239 06	
do. west "	648 75	
fencing	1,520 64	
exchange and dist	37 25	
first m'tg'e bond and coupons	585 80	
city of Milw. do	406 52	
L. Ward, rec'r ac	3,027 06	
W. F. Davidson, pres't L. C. and M. Pk't Co...	527 53	
Chicago and N. W. R. R. ac	2,847 07	
costs of suits	2,276 22	
Bal. on hand Feb'y 1, '62	31,633 66	
		109,725 92

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of January, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this twenty-fifth day of February A. D. 1862.

W. L. HINSDALE,
Notary Public, Milwaukee Co., Wis.

98 And afterwards, on the 22d day of March, 1862, came Hans Crocker and filed his report, as receiver, for the month of February, 1862.

FEBRUARY, 1862.

District court of the U. States, district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE R. R. Co. } *ss:*

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursement for the month of February, 1862.

H. CROCKER.

Receipts.

Balance on hand Feb. 1, '62	31,633 66	
From freight	40,741 11	
passengers and f'gn tickets	13,311 86	
express and miscellaneous	3,720 62	
telegraph	80	
		89,408 05

Disbursements.

For pay-rolls	25, 382 54	
bills of supplies	29, 242 48	
foreign ticket ac	2, 903 21	
advance charges	2, 233 26	
inc. E. div. coupons real est. bonds	121 20	
R. of way, western div	54 75	
fencing	104 64	
first m'tg'e bond coupons	1, 086 20	
exchange and discount	15 58	
Chicago and N. Western R'y ac	1, 739 11	
Balance on hand, March 1, '62	26, 525 08	
		89, 408 05

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of February,
99 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 22d day of March, A. D. 1861.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

And afterwards, on the 16th day of April, 1862, came Hans Crocker and filed his report, as receiver, for the month of March, 1862.

MARCH, 1862.

District court of the U. States, district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY. } *ss:*

Hon. A. G. Miller, judge of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of March, 1862.

H. CROCKER, *Receiver.*

Receipts.

On hand March 1, 1862	26, 525 08	
From freight	37, 766 06	
pass. and f'gn tickets	14, 604 35	
express and miscellaneous	1, 465 64	
telegraph	56	
		80, 361 69

Disbursements.

For pay-rolls	26,488 19	
bills supplies	25,865 65	
foreign ticket ac	3,914 87	
advance charges	4,484 52	
R. of way, east div	35 00	
Chi. and N. W. r'y ac	2,584 46	
exchange and dis't	603 00	
1st mortg'e bond coupons	120 60	
Milw. city do.	8,973 13	
On hand April 1, '62	7,889 24	
		80,361 69

100 STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of March, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 16th day of April, A. D. 1862.

W. L. HINSDALE,
Notary Public, Milw. County.

And afterwards, on the 20th day of May, 1862, came Hans Crocker and filed his report, as receiver, for the month of April, 1862.

APRIL, 1862.

District court of United States, district of Wisconsin.

SERRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY. } *ss:*

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of April, 1862.

H. CROCKER, *Receiver.*

Receipts.

Balance on hand April 1, '62	7,889 24	
Freights	35,363 85	
Passenger and foreign tickets	18,138 27	
Express and miscellaneous	3,543 55	
Mails	5,544 29	
		70,479 20

101 *Disbursements.*

Pay-rolls	$27,813 12	
Bills supplies	23,078 33	
Foreign ticket ac't	1,627 15	
Advance charges	12,394 94	
Right of way, e. div	291 37	
" " w. "	400 85	
Fencing	800 00	
La Crosse and Minn. Packet Co.	2,500 00	
Chicago and N. W. R. R. ac't	6,121 55	
Exchange and interest	302 04	
1st mortgage bond coupons	40 30	
Milwaukee city "	722 71	
		$76,092 36

Disbursements over receipts, $5,613 16.

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of April, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 19th day of May, A. D. 1862.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

And afterwards, on the 20th day of June, 1862, came Hans Crocker and filed his report as receiver for the month of May, 1862.

May, 1862.

District court of the United States, district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY. } *ss:*

To the Hon. A. G. Miller, judge of said court:

102 I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of May, 1862.

H. CROCKER, *Receiver.*

Receipts.

From freight	$127,973 98
passenger and f'gn tickets	20,807 30
express and miscellaneous	1,595 91
transportation of troops	13,942 30
mails	3,096 44
telegraph	1 84
	167,417 77

Disbursements.

Amount overpaid in April	$5, 613 16	
Pay-rolls	33, 836 40	
Bills supplies	41, 673 19	
Foreign ticket ac't	5, 370 39	
Advance charges	23, 419 61	
Incumbrances, west. div., Chamberlain	7, 908 19	
" east. "	93 28	
Right of way, west. "	250 00	
Fencing	72 82	
Chicago and Northwest'n R. R. ac't	3, 308 20	
L. Ward, rec'r ac't	9, 785 59	
1st mortgage bond coupons	100 55	
Milw. city "	1, 108 68	
Bal. on hand May 31, '62	34, 877 71	
		$167, 417 77

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of May, 1862.

H. CROCKER.

Subscribed and sworn to before me, this 19th day of June, A. D. 103 1862.

W. L. HINSDALE,
Notary Public, Mdw. Co., Wis.

And afterwards, on the 18th day of July, 1862, came Hans Crocker and filed his report as receiver for the month of June, 1862.

June, 1862.

District court of the United States, district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY. } *ss:*

To the Hon. A. G. Miller, of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of June, 1862.

H. CROCKER.

Receipts.

On hand June 1, 1862	$34, 877 71	
From freight	113, 108 13	
passenger and f'gn tickets ac't	25, 719 71	
express and miscellaneous	1, 244 50	
transportation troops	27, 963 08	
		202, 913 13

Disbursements.

For pay-rolls	$40, 009 36	
bills supplies	45, 262 42	
foreign ticket ac't	4, 224 62	
advance charges	16, 877 96	
incumbrances, W. div, Chamberlain	8, 998 45	
right of way, E. div	100 00	
fencing	870 43	
La C. and Minn. S. P'k't Co. ac't	3, 517 25	
Chi. and N. Western R'y Co. ac't	2, 211 78	
foreclosure 2d mortgage expenses	5, 000 00	
one-half State taxes for 1861	16, 062 33	
exchange	218 68	
Milwaukee city bond coupons	70 36	
Balance on hand June 30, 1862	59, 489 49	
		$202, 913 13

104 STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of June, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 17th day of July, A. D. 1862.

W. L. HINSDALE,
Notary Public, Milwaukee Co., Wis.

And afterwards, on the 22d day of August, 1862, came Hans Crocker and filed his report as receiver for the month of July, 1862.

July, 1862.

District court of the United States, district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

To the Hon. A. G. Miller, judge of said court.

I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of July, 1862.

H. CROCKER, *Rec.*

Receipts.

Balance on hand July 1, 1862	$59, 489 49
From freight	105, 227 33
pass. and f'gn tickets	34, 091 98
express and miscellaneous	1, 054 52
transp't'n of mails	2, 604 23
telegraph	11 93
	202, 479 48

[Rec. com. D. T. 1863.]—

Disbursements.

	For pay-rolls	$39, 154 66	
105	bills supplies	35, 901 85	
	foreign ticket ac't	5, 244 87	
	For advance charges	18, 844 00	
	grading, paving, and sewerage, E. div	1, 169 53	
	incumbrances, E. div	120 30	
	right of way, W. div	30 00	
	fencing	1, 300 05	
	L. Ward, rec'r, ac't	14, 631 82	
	Chicago and N. W. r'y ac't	8, 803 32	
	coupons 1st m't'ge bonds	33, 745 05	
	" city of Mil. bonds	35 10	
	Balance on hand Aug't 1, 1862	43, 497 94	
			$202, 479 48

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milmaukee railroad, for the month of July, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 22d day of August, A. D. 1862.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

And afterwards, on the 23d September, 1862, came Hans Crocker and filed his report as receiver for the month of August, 1862.

August, 1862.

District court of the U. States for the district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY. } *ss:*

To the Hon. A. G. Miller, judge of said court:

106 I herewith submit my report as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of August, 1862.

H. CROCKER, *Rec.*

Receipts.

Balance on hand Aug'st 1, '62	$43, 497 94	
From freight	60, 914 40	
pass. and foreign ticket ac't	28, 342 23	
express and miscellaneous	973 16	
transportation of mails	2, 433 27	
telegraph	10 18	
		136, 171 18

Disbursements.

For pay-rolls	$37,453 20	
bills supplies	40,841 54	
foreign ticket ac't	8,553 63	
advance charges	11,771 91	
grading, paving, and sewerage, E. div.	2,786 66	
right of way, west. div	68 00	
Chi. and N. Western R'y C'y ac't	2,168 28	
La Crosse and Min. Steam P'k't Co	4,566 22	
L. Ward, rec'r ac't	6,503 59	
1st m't'ge bond coupons	2,085 20	
city of Milw. "	315 79	
Bal'ce on hand Aug'st 31, '62	19,057 16	
		$136,171 18

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of August, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 22d day of September, A. D. 1862.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

107 *Transferred to the circuit court.*

And afterwards, to wit, on the 1st day of October, A. D. 1862, the record and papers in this cause, and the jurisdiction of the same, were transferred from the said district court to the circuit court of the United States for the eighth circuit and district of Wisconsin.

And afterwards, to wit, on the 6th day of October, A. D. 1862, in the said circuit court, came Levi Hubbell, esq., the solicitor of the said complainant, and filed in said cause, in said court, his affidavit as follows.

In circuit court of the United States, 8th circuit, and district of Wisconsin.
In equity.

Death of the complainant.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and SELAH CHAMBERLAIN.

DISTRICT OF WISCONSIN, *Milwaukee County, ss:*

Levi Hubbell, of said county and district, being duly sworn, says that, as he is informed and verily believes, Sebre Howard, the complainant in the above-entitled action, died in the month of March, 1862; that, some time prior to the death of Sebre Howard, Charles Howard, who then was, and still is, a citizen and resident of the State of New York, by assignment from

the said Sebre Howard, became the lawful owner of the judgment set forth in the bill of complaint in said action, and ever since that time has been, and now is, the lawful holder and owner of said judgment, and that said judgment remains wholly unpaid.

LEVI HUBBELL.

Subscribed and sworn to this 6th day of October, 1862, before me.

J. M. MILLER, *Clerk.*

Whereupon, on the same 6th day of October, A. D. 1862, it was by the said court ordered as follows:

108 In circuit court of the United States, 8th circuit, and district of Wisconsin.

Substitution of Charles Howard.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and SELAH CHAMBERLAIN. } Creditors' bill.

It appearing, by the affidavit of Levi Hubbell, that Sebre Howard, the complainant in the above action, died in March, 1862, and that, before his death Charles Howard, a citizen of the State of New York, became, and now is, the lawful owner of the judgment set forth in the complainant's bill of complaint, and that said judgment remains wholly unpaid, on motion of Lebi Hubbell, solicitor for said complainant, it is ordered that Charles Howard be, and he is hereby, substituted as the complainant in place of Sebre Howard, deceased, in said action, with leave to prosecute the same in all respects as the said Sebre Howard might have done.

And afterwards, on the 7th day of October, A. D. 1862, came the said Charles Howard, by Levi Hubbell, his solicitor, and filed in said cause in said court a stipulation in writing as follows:

In circuit court of the United States, 8th circuit, and district of Wisconsin.
In equity.

Stipulation of Charles Howard.

CHARLES HOWARD, assignee of Sebra Howard, complainant,
vs.
THE LA CROSS AND MILWAUKEE RAILROAD COMPANY and SELAH CHAMBERLAIN.

109 Satisfactory agreement having been made between the parties in interest in the above-entitled cause for the payment of the judgment mentioned in the bill of complaint rendered in favor of Sebre Howard, I hereby stipulate that the above-entitled cause shall be, and from the filing of this stipulation the same shall stand, dismissed and discontinued at complainant's cost; and it is hereby further stipulated, that, from the date of this stipulation, the receiver heretofore appointed in this cause by the district court of the United States for the district of Wisconsin be, and he hereby is, released and discharged from all duty as receiver in the above-entitled cause, except to account to the court for the benefit of those concerned in such accounting; and it is further stipulated, that the Milwaukee and Minnesota Railroad Company may at any time on this the 6th day of October, A. D. 1862, or as soon thereafter as it may choose so to do, enter into possession of all the railroad property, franchises, and other things,

now in the hands of the receiver in the above-entitled cause. It is further stipulated, that the proper rules and orders shall be entered in said court on the first day of the present term thereof, to effectuate the true intent of this stipulation, and discontinue said cause, and discharge said receiver; but the right of the said Milwaukee and Minnesota Railroad Company to take said possession shall be perfect, as hereinbefore stipulated, so far forth as the said complainant has the power to give the same, without awaiting the entry of such rules or orders in said cause. Dated October 6, 1862.

LEVI HUBBELL,
Solicitor for complainant.

And thereupon, and upon the same day, to wit, the seventh day of October, A. D. 1862, being the second day of a special term of said circuit court, begun and held at the court-room of said court, in the city of Milwaukee, on the first Monday, being the sixth day of October, A. D. 1862, the said circuit court made an order in said cause as follows:

110 *Dismissal of bill.*

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, AND SELAH CHAMBERLAIN.

This day came Mr. Hubbell, counsel for the complainant, and moved the court for an order dismissing the bill of complaint in this action, at the cost of complainant, upon the stipulation and papers on file in this action, whereupon it is ordered by the court that the bill of complaint be, and hereby is, dismissed at the cost of the complainant.

Monday, January 5, A. D. 1863. The first day of the term. In pursuance of an act of Congress entitled "An act to amend the act of the third of March, 1837, entitled an act supplementary to the act entitled an act to amend the judicial system of the United States," approved July 15th, 1862, a stated term of the circuit court of the United States of America, for the district of Wisconsin, in the 8th circuit, composed of the States of Michigan, Illinois, and Wisconsin, begun and held at the United States court-room in the city of Milwaukee, according to law, on the first Monday (being the 5th day) of January, in the year of our Lord one thousand eight hundred and sixty-three, at eleven o'clock in the forenoon, present and presiding the honorable Andrew G. Miller, district judge for said district, (the honorable David Davis, the associate justice of the supreme court of the United States, assigned to said circuit, not being present,) also present.

JOHN H. D. COGSWELL, *Attorney.*
DARIUS C. JACKSON, *Marshal.*

111 Afterwards, to wit, on the 17th day of January, A. D. 1863, being the 13th day of the said term, the following proceedings were had, viz:

Order to reinstate bill.

CHARLES HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, and SELAH CHAMBERLAIN.

This day came the complainant, by his counsel, and moved the court to vacate the order made on the 7th day of October last, dismissing this bill,

the same having been done in mistake; whereupon it is ordered by the court that the said order dismissing this bill be, and hereby is, vacated; and the cause restored the same as if the order now vacated had not been made.

And afterwards, to wit, on the 20th day of January, A. D. 1863, came the said complainant, by Levi Hubbell, his said solicitor, and filed his petition as follows:

Petition of Charles Howard.

Circuit court of the United States, 8th circuit, district of Wisconsin

CHARLES HOWARD, assignee of Sebre Howard,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, and SELAH CHAMBERLAIN.

To the judges of the circuit court, district of Wisconsin:

Your petitioner, Charles Howard, complainant in the above-entitled action respectfully represents that the judgment set forth in the creditors' bill in said action was entered in the late district court of Wisconsin district on the 28th day of November, 1859, for the sum of $16,379 86 damages and cost, and was founded upon a judgment duly entered and docketed
112 in the circuit court of Milwaukee county, in the State of Wisconsin, on the 1st day of May, 1858, in favor of Sebre Howard, plaintiff, and against the La Crosse and Milwaukee Railroad Company, defendant, on which the sum of $15,466 89 remains due and unpaid, with interest from the 1st day of May, 1858; and that both of said judgments remain unreversed and unsatisfied of record, and unpaid as to the sums above stated, and constitute valid equitable liens upon said railroad; and the property used and connected therewith, and your petitioner is informed and believes that there is no judgment (unless for a few hundred dollars) which constitutes a valid lien upon said railroad and property prior in equity to that of your petitioner so entered and remaining in the said State court. Your petitioner further represents, upon information and belief, that the receiver's appointment on the application of the complainant in the above-entitled action is prior in date to any other, and that since his said appointment he has received of the earnings and income of said railroad more than eleven hundred thousand dollars, over and above current running expenses; and that there is now money in his hands amply sufficient to pay and satisfy your petitioner's said judgment. Your petitioner further represents, that in the prosecution of his said several proceedings against said railroad company in procuring the appointment of said receiver, and watching over his proceedings for a period of over two years and a half, he has been put to very great expense and cost, all of which, as the money in the hands of said receiver has been disposed of, has been of great benefit and advantage to the said road, and to the creditors having liens thereon prior to him, and of no advantage to him. Your petitioner therefore prays that the said judgment, interests, and costs may be now ordered to be paid; or that some portion thereof may be paid, together with a reasonable and proper sum for his costs and disbursements in the case, and as in duty bound, &c. Dated
113 January 19, 1863.

CHARLES HOWARD, *Assignee.*
By his att'y, LEVI HUBBELL.

And thereupon, and on the same 20th day of January, A. D. 1863, being the 16th day of the said term of January, A. D. 1863, the following proceedings were had in said circuit court:

CHARLES HOWARD, assignee,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and Selah Chamberlain.

This day came the complainant by his solicitor, Levi Hubbell, and presented his petition in writing, this day filed, setting forth that on his judgment this bill was filed, and that on this bill the first order was made by the court appointing a receiver, which, with subsequent proceedings, was attended with expense and trouble, and praying that said judgment be ordered, paid, or a reasonable sum for his costs and disbursements in the case; whereupon it is ordered by the court, that the receiver to pay to the said complainant, or his said solicitor of record, one thousand dollars ($1000) as part of said judgment.

Receiver's report.

The receiver in said cause, on the 14th day of October, A. D. 1862, filed and made his report for the month of September, 1862, as follows:

District court U. S., district of Wisconsin.

SEBRE HOWARD
vs.
LA CROSSE & MILWAUKEE RAILROAD COMPANY.

Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwau-
114 kee railroad, showing my receipts and disbursements for the month of September, 1862.

H. CROCKER, *Rec.*

Receipts.

Balance on hand Sept. 1, 1862	$19,057 16
For freight	126,774 66
passengers and foreign tickets	42,865 35
express and miscellan'us	1,113 74
telegraph	34 55
	189,845 46

Disbursements.

Pay-rolls	$30,524 60	
Bills supplies	26,816 13	
Foreign tickets	9,356 09	
Advance charges	16,556 27	
Grading, paving, &c., E. div.	1,245 23	
Right of way "	623 00	
do do W. div.	428 00	
La C. and Minn. St. P'k't Co	4,211 46	
Chicago and N. W. R'y Co	872 99	
L. Ward, rec'v. ac	3,523 51	
S. D. Hastings, treas'r taxes	16,062 33	
Money rec. U. S. dept. tra. troops	93 96	
Legal expenses (costs in suit of Carney)	56 75	
First mort. bonds coupons	409 01	
City of Milwaukee do	8,627 80	
Balance on hand Sept. 30, 1862	70,438 33	
		$189,845 46

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker being duly sworn, deposes and says, that the foregoing is a true and accurate statement of his receipts and disbursements as receiver of the La Crosse and Milwaukee railroad for the month of September, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 14th day of October, A. D. 1862.

W. L. HINSDALE,
Notary Public, Milwaukee Co., Wis.

115 The receiver in said cause, on the 18th day of November, made and filed his report for the month of October, 1862, as follows:

District court of the U. S., district of Wisconsin.

SEBRE HOWARD
vs.
LA CROSSE & MILWAUKEE RAILROAD COMPANY.

To the Hon. A. G. Miller, judge of said court:

I herewith submit my report as receiver of the La Crosse and Milwaukee r. r'd, showing my receipts and disbursements for the month of Octo., 1862.

H. CROCKER, *Rec.*

Cash on hand Octo. 1, 1862		$70,438 33
Receipts.		
From freight		161,021 95
passengers and for'n tickets		38,426 95
express and miscellaneous		942 00
telegraph		17 58
		270,846 80
Disbursements.		
For pay-roll	$33,835 60	
bills supplies	31,492 25	
foreign tickets	6,467 37	
advance charges	25,178 47	
grading, p. and sewerage, E. div	571 16	
right of way, E. div	1,200 00	
fencing	1,612 37	
Chicago and N. W. r'y ac	12,412 95	
La Crosse and Minn. St. P'k't Co. ac	2,859 27	
L. Ward, receiver ac	4,957 66	
rolling stock	22,100 00	
legal expenses sale, W. div	1,157 39	
" "	10 50	
first mortg. bonds coupons	533 30	
city mortg	2,547 35	
Bal. on hand Oct. 31, 1862	123,881 16	
		$270,846 80

116 STATE OF WISCONSIN, *County of Milwaukee, ss:*

Hans Crocker, being duly sworn, deposes and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of October, A. D. 1862, according to his best information, knowledge, and belief.

H. CROCKER.

Subscribed and sworn to before me this 18th day of November, A. D. 1862

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

The said receiver, on the 19th day of December, 1862, made and filed his report, as receiver, for the month of November, 1862, as follows:

NOVEMBER, 1862.

Circuit court of the U. S, district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY.

To the Hon. D. Davis, judge of said court:

I herewith submit my report, as receiver, showing my receipts and disbursements for the month of November, 1862.

H. CROCKER, *Rec.*

Receipts.

Balance on hand October 31, 1862	$123,881 16
Freight	128,397 21
Passengers and foreign tickets	33,670 27
Express and miscellaneous	1,978 69
Chic. and N. west'n railway ac	925 38
Telegraph	50 09
	288,902 80

Disbursements.

Pay-rolls	$39,507 46	
Bills supplies	35,578 11	
Foreign tickets	11,583 44	
Advance charges	21,756 03	
Grading, paving E. div	1,483 88	
117 Right of way E. div	309 15	
" " W. div	21 00	
Fencing	400 00	
Rolling stock	516 20	
Fire insur.	2,300 00	
L. Ward, rec'r acc	3,833 00	
First mortg. bonds and coupons	31,784 59	
City Mil. do. do.	157 97	
Balance, cash on hand	139,671 99	
		288,902 80

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and saith, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of November, 1862, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this day of November, A. D. 1862

And afterwards, to wit, on the 27th day of January, A. D. 1863, came the said Hans Crocker, and made and filed his report for the month of December, 1862, as follows:

U. S. circuit court, district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD.

To the honorable judges of said court:

I herewith submit my report, as receiver of the La Crosse and Mil. railroad, showing my receipts and disbursements for the month of December, 1862.

H. CROCKER, *Receiver.*

Receipts.

Balance on hand Nov. 30, 1862		$139,671 99
Freight		98,031 04
Passengers and foreign tickets		41,609 67
Express and miscellaneous		1,835 22
Telegraph		76 07
118 U. S. mail service		5,809 19
		287,033 18

Disbursements.

Pay-rolls	$33,976 30	
Bill supplies	55,427 28	
Foreign tickets	11,135 51	
Advance charges	19,596 96	
Grading, paving E. div	396 70	
Right of way W. div	121 00	
Fencing	351 11	
Chicago and N. west railway	5,664 18	
L. Ward, rec'r	1,165 80	
Cleveland judgment	15,000 00	
Cattle killed during Chamberlain's administration	300 00	
City of Milw. bonds coupons	179 47	
First mortg. bond coupons	2,493 18	
Government tax on first mortgage coupons, paid in Nov., 1862	974 40	
Balance, cash on hand Dec. 31, 1862	140,251 29	
		287,033 18

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of December, A. D. 1862, according to his best information, knowledge, and belief.

H. CROCKER.

Subscribed and sworn to before me this 26th day January, A. D. 1863.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

And afterwards, on the 19th day of February, 1863, came Hans Crocker, receiver, and filed his report for the month of January, 1863, as follows:

119 Circuit court of the U. States, district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MIL. R. R. and others. } *ss:*

To the hon. judges of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of January, 1863.

H. CROCKER, *Receiver.*

Receipts.

Balance, cash Dec. 31, 1862		$140,251 29
Freight		43,610 24
Passengers and foreign tickets		13,845 82
Express and miscellaneous		1,781 03
Fire insurance		1,000 00
		200,488 38

Disbursements.

Pay-rolls	$25,700 00	
Bills supplies	5,051 82	
Foreign tickets	1,631 05	
Advanced charges	5,044 39	
Incumbrances, east divi	123 57	
L. Ward, receiver	1,165 05	
Horicon railroad military acc	60 68	
Chicago and N. Western railway	1,974 23	
J. M. Kimball & Co	59 58	
Charles Howard, judgment	1,000 00	
First mortgage bonds coupons	876 27	
City of Milwaukee bonds coupons	158 22	
Government tax on pass. income, September	599 48	
Government tax on pass. income, October	906 25	
Government tax on pass. income, November	814 83	
License to use patent right, Conway	800 00	
Balance, cash on hand January 31, 1863	154,522 96	
		200,488 38

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of January,
120 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 19th day of February, A. D. 1863.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

And afterwards, on the 21st day of March, 1863, came Hans Crocker, and filed his report, as receiver, for the month of February, 1863, as follows:

Circuit court of the U. S. for the State of Wisconsin.

SEBRE HOWARD
vs.
LA CROSSE and MILWAUKEE RAILROAD *et al.*

To the hon. judges of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee R. R'd, showing my receipts and disbursements for the month of February, A. D. 1863.

H. CROCKER, *Rec.*

Receipts.

Balance on hand January 31, 1863		$154,522 96
For freight		60,659 39
passengers and foreign tickets		17,751 33
express and miscellaneous		1,218 98
telegraph		15 15
		234,167 81

Disbursements.

For pay-rolls	$26,773 20		
bills supplies	25,698 70		
foreign tickets	5,465 39		
advanced charges	4,209 01		
right of way, E. D	55 00		
fencing	65 90		
fire insurance	895 00		
State tax, S. D. H., treasurer	16,425 70		
gov't tax, pass'r ac., Dec., '62	759 34		
" " " Jan'y, '63	673 54		
" " coupons, Dec., '62	62 40		
121 For first mortg. coupons	793 35		
City Milw. do	1,089 08		
Balance on hand Feb'y 28	149,539 80		
			234,167 81

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of February, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 21st day of March, A. D. 1863.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

And afterwards, on the 22d day of April, 1863, came Hans Crocker, and filed his report, as receiver, for the month of March, 1863, as follows:

Circuit court of the U. S. for the State of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and others.

The hon judges of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee R. R., showing my receipts and disbursements for the month of March, 1863.

H. CROCKER, *Receiver.*

Receipts.

Balance of cash on hand Feb'y 28, '63	$149, 539 80
From freights	43, 574 19
pass. and f'gn tickets	27, 635 39
trans't of troops	156 46
express and miscellaneous	1, 109 75
telegraph	10 22
	222, 025 81

122

Disbursements.

For pay-rolls	$26, 135 70	
bills supplies	24, 668 39	
foreign ticket ac	5, 150 16	
advance charges	6, 794 97	
R. of way, E. div	100	
" " W. "	100	
fencing	30	
J. M. Kimball & Co. ac	96	
land grant mortg'e	25, 000	
Chicago and N. W. R'y ac	7, 096 04	
L. C. and M. Steam Pk't Co	1, 511 03	
fire insurance	116 32	
1st m'tg'e bond coupons	350 50	
city of Milw. do.	8, 691 38	
legal expenses p'd city of Mil	600	
Bal. on hand M'ch 31	115, 585 32	
		222, 025 81

STATE OF WISCONSIN, *Milwaukee County, ss:*

H. Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of March, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this twenty-second day of April A. D. 1863.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

And afterwards, on the 20th day of May, 1863, came Hans Crocker, and filed his report, as receiver, for the month of April, 1863.

APRIL, 1863.

123 Circuit court of the U. States for the State of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY.

To the hon judge of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee R. R., showing my receipts and disbursements for the month of April, 1863.

H. CROCKER.

Receipts.

Cash on hand April 1, 1863		$115, 585 32
From freight		73, 682 72
passengers and f'gn tickets		29, 545 28
U. S. gov't for trans. of troops		5, 844 14
" " " " " mails		1, 234 06
express and misc'l		1, 061 91
telegraphs		11 85
		226, 965 28

Disbursements.

For pay-rolls	$29, 405 58	
bills supplies	36, 059 05	
advance ch'g's	17, 034 49	
foreign ticket ac	3, 099 08	
J. M. Kimball & Co. ac	104	
gov't tax on coupons	313 58	
" " pass'gs income	1, 200 38	
Ch'g and N. W. R'y ac	7, 363 22	
M. and P. du C. r'y ac	704 40	
F. Vose ac., W. div., "order court"	8, 394 14	
1st m'tg'e bond coupons	472 17	
city of Milw. bond coupons	1, 425 82	
Cash on hand April 31	121, 389 37	
		226, 965 28

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the fore-
124 going is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of April, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this nineteenth day of May, A. D. 1863.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

125 That afterwards, to wit, on the 12th day of June, A. D. 1863, being the twentieth day of a stated term of said circuit, commenced and held at the court-room of said court, in Milwaukee, on the third Monday (being the twentieth day) of April, A. D. 1863, the following proceedings were had:

Order on petition of Milwaukee & St. Paul R. R. Co.

CHARLES HOWARD, assignee,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY *et al.* } In equity.

A petition in writing of the Milwaukee and St. Paul Railway Company having been presented to the district court of the United States for this district, and filed in that court in the case of Green C. Bronson, James T. Soutter, and Shepherd Knapp, against the La Crosse and Milwaukee Railroad Company and others, setting forth, in substance, that in pursuance of a decree of said court in that case the western division of the La Crosse and Milwaukee railroad between La Crosse and Portage City has been sold, and that said sale was confirmed and perfected, and that said Milwaukee and St. Paul Railway Company is a corporation organized under the laws of the State as grantees under said sale, and praying to be allowed to operate the whole line of road between La Crosse and Milwaukee as a continuous road, as directed and authorized by the act incorporating the La Crosse and Milwaukee Railroad Company; and the said petition having been argued by Messrs. Cary & Lynde in support thereof, and by Messrs. Hubbell and Carpenter on behalf of this complainant and the Milwaukee and Minnesota Railroad Company in opposition thereto; and the court being satisfied
126 that the policy of the State, and the interests of the public, and of the creditors of the La Crosse and Milwaukee Railroad Company, require that the court should not continue further to operate by its receiver any part of the said railroad between La Crosse and Milwaukee, but that the whole line of said road should be operated without interruption or embarrassment by a responsible corporation; and the court being satisfied that its possession and control by a receiver of the eastern division between Portage City and Milwaukee might affect the rights of the public, and embarrass the free and proper operation of the whole road as required by the original grant of charter, and also prejudice the interests of creditors of the La Crosse and Milwaukee Railroad Company; and it being represented to the court that persons interested in the Milwaukee and St Paul Railway Company own or control bonds included in the mortgage to said Green C. Bronson, James T. Soutter, and the subject of that suit to the amount of four hundred and seventy-eight thousand dollars, being nearly one-half of the whole amount of said mortgage: it is thereupon ordered by the court that the order appointing the receiver in this case be modified in manner following, subject to any further or other order rescinding, altering, or modifying this order now here made; that the receiver let the said Milwaukee and St. Paul Railway Company into possession of the eastern division of the La Crosse and Milwaukee railroad between Portage City and Milwaukee, with its appurtenances, and property, and rolling stock, thereto belonging; and that the said Milwaukee and St. Paul Railway Company, subject to the further order or orders of the court, operate said eastern division of said railroad in connection with the the said western division thereof, so that
127 one continuous line of railroad between La Crosse and Milwaukee may be operated and conducted as directed in the original charter of the La Crosse and Milwaukee Railroad Company, without hinderance, interruption, or diversion, the same as if the whole line of road continued to be in one company, in pursuance of said charter, and not otherwise. And it is further ordered by the court that the said Milwaukee and St. Paul Railway Company shall at all times allow and permit the receiver, or such other persons as may be at any time appointed for that purpose, to have daily access and examination of the records, books, papers, accounts, proceedings, receipts,

and revenues, and also of the transactions of the said Milwaukee and St. Paul Railway Company, and of its board of directors, in relation to the business and operations of the whole line of road; and that the said Railway Company shall, out of the revenues of said road, keep the said eastern division, and all the rolling stock, in good order, and defray all running and other necessary expenses, and at the end of every month deliver to the said receiver, or such other person as may be appointed, a full and detailed account of all revenues arising on the whole road, and of all necessary disbursements out of the same, and pay over monthly to the receiver the proportion of the said eastern division of the net revenues of the said railroad; and that the said receiver make monthly returns, as heretofore, of his accounts into court, and disburse the moneys by him received from time to time in the payment of liens and debts of the said La Crosse and Milwaukee Railroad Company, according to their priorities and equities. And

it is further ordered by the court that before the said Milwaukee and
128 St. Paul Railway Company be permitted to have possession under this order, the said company, by its constituted officers, shall enter into bond to the United States for the use and benefit of all interested, with sureties to be approved by the court, in the penalty of one hundred thousand dollars, conditioned that said company will faithfully comply with this order of court this day made, and any subsequent orders relating to the operation and management of the said railroad between La Crosse and Milwaukee, and will keep said road, and the rolling stock, and property, in good order, and shall manage and conduct the same to the best advantage of the public, and the creditors of the La Crosse and Milwaukee Railroad Company, and shall make monthly returns, and pay over the net revenues of said road, according to this order; and that the receiver be discharged as such in relation to the western division, subject to the settlement of his accounts.

That afterwards, to wit, on the 18th day of June, A. D. 1863, as
129 yet of the last aforesaid term, came the complainant, by his solicitor, and made and filed his motion as follows, that is to say:

Circuit court of the United States, 9th circuit, Wisconsin district, of May term, 1863.

Motion to vacate order of 12th June.

CHARLES HOWARD, assignee of Sebre Howard, dec'd,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY, and SELAH CHAMBERLAIN.

And now on this day, to wit, on the 16th day of June, in this term, comes Charles Howard, the complainant in the above-entitled action, by Levi Hubbell, his solicitor, and moves the court now here to set aside, vacate, and annul the order purporting to be made in said action, on the 12th day of June, 1863, dispossessing Hans Crocker, the receiver in said action, of the line of the La Crosse and Milwaukee railroad from the city of Milwaukee to the city of Portage, in the State of Wisconsin, and of all the rolling stock, fixtures, personal property, and franchises belonging to, and used, and connected with said line of road, and putting the same into the possession and under the control and management of the so-called Milwaukee and St. Paul Railway Company, with power and authority to use, operate, and manage the same, collect and receive the tolls, income, and profits arising from such use, operation, and management, to the exclusion of the rightful owners of the same, for the following reasons:

1st. The said order was made without the application or consent, against the wishes, and in violation of the rights, of said complainant.

2d. The said order was made when the said action was not before the court, when the solicitor of the complainant was not present; and, in fact, was made as a part of the proceedings and action of another and different court, in another and different case, relating to other and different property.

3d. The said Milwaukee and St. Paul Railway Company has no right, title, or interest in or to the line of railroad and other property so put into its possession; but, on the contrary, has vast interests, and has made important contracts and business arrangements directly adverse and hostile to the interests of the real owners of the said line of railroad, and the property connected therewith.

130 4th. The said order is unauthorized, illegal, and oppressive.

5th. The reasons assigned by the court for making said order have no foundation in fact; and, if well founded in fact, they confer no right upon the court to take the property of one party without his consent and bestow it upon another, or to deprive the true owner of the possession and management of his own property.

6. The Milwaukee and Minnesota Railroad Company is entitled to the possession, control, use, income, and tolls of said line of railroad and other property, subject only to such mortgages and judgments as have a prior and valid lien thereon; and in case of the withdrawal of the possession and control of said line of road, and the property connected therewith, from the receiver, the same ought, by legal right, to be placed in the possession and under the control of said Milwaukee and Minnesota Railroad Company as the real owner of the same.

LEVI HUBBELL, *Solicitor*,
For Charles Howard, Assignee, &c.

131 That afterwards, to wit, on the 18th day of June, A. D. 1863, as yet of the last aforesaid term of said court, the following proceedings were had, that is to say:

CHARLES HOWARD, assignee,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and SELAH CHAMBERLAIN.

This day came the complainant, by his counsel, and moved the court to vacate the order made on the 12th instant putting the Milwaukee and St. Paul Railway Company into possession of this road.

Receiver's report.

And afterwards, to wit, on the 23d day of June, A. D. 1863, came Hans Crocker, receiver, and made and filed his report for the month of May, 1863, as follows:

Circuit court of the U. S., State of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE R. R. Co.

To the hon. judge of said court:

I herewith submit my report, as receiver of the La Crosse & Milwaukee railroad, showing my receipts and disbursements for the month of May, 1863.

H. CROCKER, *Rec.*

Receipts.

Am't on hand April 30th, '63		$121, 389 37
From freight		135, 680 20
passenger and foreign tickets		37, 697 66
U. S. Post Office Dep't		132 47
telegraph		18 29
express and misc'l		978 29
Chicago & NW. R'y ac.		10, 925 94
		306, 822 22

Disbursements.

For pay-rolls	$34, 634 40	
bills supplies	28, 716 32	
foreign tickets	4, 943 61	
advance charges	15, 433 61	
For Chicago & NW. ac.	3, 625 27	
132 " L. Ward, rec'r's ac.	6, 700 95	
" L. C. & St. P. Packet Co.	514 58	
For patent rights	250	
legal ex., west div.	2, 716 69	
1st mtge. bond coupons	28, 891 32	
Mil. city " "	187 44	
Cash on hand May 31	180, 208 03	
		306, 822 22

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of May, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 22d day of June, A. D. 1863.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

Filed June 23, 1863.

That afterwards, to wit, on the 17th day of July, A. D. 1863, as yet of the said term last aforesaid, the following proceedings were had, that is to say:

CHARLES HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and SELAH CHAMBERLAIN.

This day, the motion to vacate the order made on the 12th June last, putting the Milwaukee and St. Paul Railway Company into possession, came on to be heard, and was argued by Mr. Hubbell in support of, and by Mr. Emmons against the same.

That afterwards, to wit, on the 18th day of July, A. D. 1863, as yet of the said term last aforesaid, the following proceedings were had:

133 CHARLES HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and SELAH CHAMBERLAIN.

This day, the motion to vacate the order made on the 12th day of June ast, putting the Milwaukee and St. Paul Railway Company into possession, was further argued by Mr. Corey against, and by Mr. Carpenter in support of, the same, when the court took the same under advisement.

That afterwards, to wit, on the 21st day of July, A. D. 1863, as yet of said term last aforesaid, the following proceedings were had, that is to say:

Motion to vacate order of 12th June overruled.

CHARLES HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and SELAH CHAMBERLAIN.

This day came the parties, by their counsel, and the motion of the complainant for an order vacating the order of the 12th day of June, A. D. 1863, having been argued by counsel, it is ordered by the court that the said motion be, and hereby is, overruled.

134 And afterwards, to wit, on the 25th day of July, A. D. 1863, came Hans Crocker, receiver, and filed his report for the month of June, 1863, as follows:

Receiver's report.

SEBRE HOWARD
vs.
THE LA CROSSE & MILW. R'WAY CO. and others. } *ss:*

To the hon. judge of the circuit court of the U. S. for the district of Wisconsin:

I herewith submit my report, as receiver of the La Crosse & Milwaukee railroad, showing my receipts and disbursements for the month of June, 1863.

H. CROCKER, *Rec.*

Receipts.

Balance of cash on hand May 31, 1863, as p'r report.....		$180, 208 03
Freight.....	$87, 782 77	
Passengers and foreign tickets.....	23, 338 98	
U. S. mails.....	45 44	
Telegraph.....	11 22	
La Crosse and Minn. Steam Packet Co.....	8, 304 04	
Chicago and N. Western Railway Co.....	8, 195 94	
Express and miscellaneous.....	90 47	
		127, 768 86
		$307, 976 89

Disbursements.

Pay-rolls		$41,156 50
Bills supplies		21,376 25
Foreign ticket ac		4,038 86
Advance charges and freight refunded		47,344 64
Grading and paving on east div		739 27
Fencing		220 00
First mortg'e bond coupons	$5,393 92	
Milw'e city "	306 96	
		5,700 61
Government taxes on pass. income, April		885 60
Chicago and N. Western Railway Co		154 26
La Crosse and Minne'a Steam Packet Co		15,152 96
Lyndsey Ward, receiver		3,981 75
Milw'e and St. Paul Railway Co		29,157 45
Cash on hand June 30, 1863		138,068 74
		307,976 89

135 STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of June, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 24th day of July, A. D. 1863.

W. L. HINSDALE,
Notary Public, Milw'e Co., Wis.

Filed July 25, 1863.

And afterwards, to wit, on the 21st day of August, A. D. 1863, came Hans Crocker, receiver, and filed his monthly report for the month of July, as follows:

Circuit court of the U. States for the State of Wisconsin.

SEBRE HOWARD
vs.
LA CROSSE & MILW'E RAILROAD, &C. } *ss:*

To the hon. judges of said court:

I herewith submit my report, as receiver of the eastern division of the La Crosse and Milw'e railroad, showing my receipts and disbursements for the month of July, 1863.

H. CROCKER, *Receiver.*

Receipts.

Balance, cash on hand June 30, '63		$138,068 74
Freight, on May and June ac	$1,379 43	
Passenger and foreign tickets ac	3,356 71	
Miscellaneous	228 38	
		4,964 52
		143,033 26

Disbursements.

Pay-rolls, in June ac	$16, 163	18	
Bills supplies	10, 707	94	
Foreign ticket balances	3, 404	71	
Freight earnings refunded	2, 838	01	
Grading and paving, east div	117	00	
Right of way, " "	442	25	
Chas. H. Roberts, order of court, land grant ac't.	700	00	
Legal expenses	74	56	
136 1st mortgage bond coupons	1, 992	49	
City of Milw'e " "	186	73	
Government tax on pass. income, May	1, 026	49	
Chicago and N. Western Railway Co	476	88	
Cash on hand July 31, 1863	104, 903	02	
			$143, 033 26

STATE OF WISCONSIN, *Milw'e County, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the eastern division of the La Crosse and Milw'e railroad, for the month of July, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 21st day of August, A. D. 1863

W. L. HINSDALE,
Notary Public for Milw'e Co., Wis.

Filed August 21, 1863.

And afterwards, to wit, on the 26th day of September, A. D. 1863, came Hans Crocker, receiver, and filed his report of earnings of eastern division, from 15 June to 31 August, 1863, as follows:

Circuit court of the United States for the State of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILW'E RAILROAD CO. and others.

To the hon. the judges of said court:

The schedules returned to me by the Milwaukee & St Paul Railway Co., and filed in the case of Greene C. Bronson and James T. Soutter *vs.* The La Crosse and Milw'e R. R. Co. and others, show the earnings and expenditures applicable to the eastern division of the road, from the 15th day of June to the 31st day of August, 1863, upon the basis established by that company in the absence of any agreements between them and me as receiver. This basis is the same as that heretofore adopted by me in dividing the earnings and expenses of the road between the eastern and western divisions,
137 with the exception that that company charge the eastern division for the use of that portion of the rolling stock owned by them, as defined by the order and decree of the court, bearing date 13th June, 1863. The expense of keeping the rolling stock in repair is charged to the western division.

H. CROCKER, *Rec.*

Filed Sept. 26, 1863.

And afterwards, to wit, on the 29th day of September, A. D. 1863, the said Hans Crocker, receiver, made and filed his report, as follows, for August, 1863.

Circuit court of the United States for the district of Wisconsin.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others.

To the hon. the judges of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of August, 1863.

H. CROCKER, *Rec.*

Receipts.

Bal., cash in hand July 31, 1863		$104,903 02
Foreign ticket ac't		114 85
U. S. mail service		12,519 92
Miscellaneous		1,271 70
		118,809 49

Disbursements.

Bills supplies	$2,956 84	
Freight earnings refunded	635 43	
Grading and paving, east div	1,004 86	
Right of way, do. do	40 00	
1st mortgage bond coupons	1,674 64	
Milw'e city do.	17 04	
Chicago and N. Western railway	668 03	
Cash on hand Aug. 31, '63	111,812 65	
		118,809 49

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of August, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 28th day of September, A. D. 1863.

W. L. HINSDALE,
Notary Public, Milw'e Co., Wis.

Filed Sept. 29, 1863.

138 *Petition of Charles Howard.*

That afterwards, to wit, on the 5th day of October, A. D. 1863, the following proceedings were had in said cause in said court:

CHARLES HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and SELAH CHAMBERLAIN.

The petition on behalf of the complainant to be paid the amount of the judgment mentioned in this bill, out of the revenues of the road in the

hands of the receiver, having been argued by counsel, and it appearing that the western division of the road, from Portage City to La Crosse, has been sold on a prior mortgage, and that the revenues of the eastern division of said road, from Milwaukee to Portage City, are required for prior incumbrances and mortgages, it is thereupon ordered by the court, that the prayer of said petition be not granted; but with leave to renew said petition at such time as the revenues of the road may warrant granting the same.

139 *Receiver's report.*

And afterwards, on the 31st day of October, 1863, came Hans Crocker, and filed his report, as receiver, for the month of September, 1863, as follows:

U. S. district court for the district of Wis.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD and others.

To the judge of said court:

I herewith submit my report, as receiver of the La Crosse and Milw. rail road, showing my receipts and disbursements for the month of September, 1863.

H. CROCKER, *Rec.*

Receipts.

Bal., cash on hand Aug. 31, '63		$111,812 65
Foreign ticket ac's, balances to June 1, '63		2,342 72
		114,155 37

Disbursements.

Bills supplies, &c., previous to June 1, '63	$502 13	
Freight earnings refunded	28 58	
Grading and paving (east div.)	485 54	
Bal. of State tax, 3 pr. ct. on earnings for 1862.	16,425 69	
First mortgage bond coupons	350 50	
Milw. city .....do	8,928 48	
Cash on hand September 30, '63	87,434 45	
		114,155 37

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of September, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Sworn to and subscribed before me this 28th day of October, A. D. 1863
W. L. HINSDALE,
Notary Public for Milw. Co., Wis.

140 And afterwards, on the 27 day of November, 1863, came Hans Crocker, and filed his report, as receiver, for the month of October, 1863.

OCTOBER, 1863.

Circuit court of the U. States for the State of Wisconsin.

CHARLES HOWARD, assignee,
vs.
LA CROSSE & MILWAUKEE RAILROAD Co. and others.

To the hon. judges of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of October, 1863.

H. CROCKER, *Rec.*

Receipts.

Balance, cash on hand Sept. 30, 1863	$87,434 45
Foreign ticket balances	837 56
U. S. mails	252 56
	88,524 57

Disbursements.

Bills supplies previous to June 12, '63	$210 50	
Foreign ticket balances	1,378 07	
Incumbrances, grading, paving, &c	190 66	
Freight earnings refunded	96 95	
La Crosse & Milw. Packet Co.	859 27	
1st m'ge bond coupons p'd in Oct. $51 12		
Do. do. gov. tax, Sept. 30.. 84 60	135 72	
Milw. city do. p'd in Oct. 596 36		
Do. do. gov. tax, Sept. 30 262 50	858 86	
2d m't'ge bond coupons	441 65	
Cash on hand Oct. 31, '63	84,352 89	
		88,524 57

STATE OF WISCONSIN, *Milw. Co., ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of October, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 25th day of November, A. D. 1863.

W. L HINSDALE,
Notary Public, Milw. Co., Wis.

141 And afterwards, on the 4th day of January, 1864, came Hans Crocker, and filed his report, as receiver, for the month of November, 1863.

NOVEMBER, 1863.

Circuit court of the United States for the State of Wisconsin.

CHARLES HOWARD, assignee,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and SELAH CHAMBERLAIN. } *ss:*

To the hon. judges of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of November, 1863.

H. CROCKER, *Receiver.*

Receipts.

Balance on hand Nov. 1, 1863		$84, 352 89
From U. S. Post O. Dept		156 35
		84, 509 24

Disbursements.

For bills supplies	$170 93	
" foreign tickets	89 93	
" right of way, E div	25 53	
" " " W. "	13 12	
" freight and earnings refunded	13 65	
" 1st m'tg'e bond coupons	31, 777 44	
" city of Milw. "	187 45	
Balance Nov. 30, 1863	52, 231 19	
		84, 509 24

STATE OF WISCONSIN, *Milwaukee County, ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of November, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 20th day of Dec., A. D. 1863.

W. L. HINSDALE,
Notary Public, Mil. Co., Wis.

142 And afterwards, on the 20th day of January, 1864, came Hans Crocker, and filed his report as receiver, for the month of December, 1863, as follows:

U. S. circuit court, Wis.

SEBRE HOWARD
vs.
THE LA CROSSE & MIL. R. R. Co. *et al.* } *ss:*

To the judges of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of December, 1863.

H. CROCKER, *Rec.*

Receipts.

Balance, cash on hand Nov. 30, 1863	$52, 231 19
U. S. government for trans. troops	4, 330 02
	56, 561 21

Disbursements.

Bills supplies	$403 11	
Freight earnings refunded	18 51	
1st mortgage bond coupons	1, 090 47	
Milw. city do. do.	1, 292 65	
Bal. cash on hand Dec. 3, 1863	53, 756 47	
		56, 561 21

STATE OF WISCONSIN, *Milw. Co., ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of December, 1863, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 18th day of January, A. D. 1864

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

143 And afterwards, on the 4th day of February, 1864, came Hans Crocker, and filed his report, as receiver, for January, 1864.

JANUARY, 1864.

Circuit court of the U. S. for the ninth circuit.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD and others. } *ss:*

To the hon. the judges of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of January, 1864.

H. CROCKER, *Rec.*

Receipts.

Balance, cash on hand Dec. 31, 1863	$53, 756 47
None	

Disbursements.

Bills supplies	$1 74	
Incumbrances, east'n divi	116 98	
Gov. tax on coupons paid in quar. ending Dec. 31, '63	1, 064 62	
First mortgage bond coupons	957 87	
Milw. city do.	206 79	
Bal. cash	51, 408 47	
		53, 756 47

STATE OF WISCONSIN, *Milw. Co., ss:*

Hans Crocker, being duly sworn, deposeth and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of January, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 31st day of January, A. D. 1864.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

144 And afterwards, on the 22d day of March, 1864, came Hans Crocker, and filed his report, as receiver, for the month of February, 1864.

To the hon. judges of said court:

I herewith submit my report, as receiver of the La Crosse and Milwaukee railroad, showing my receipts and disbursements for the month of February, 1864.

H. CROCKER, *Receiver.*

Receipts.

Balance, cash on hand January 31, 1864		$51,408 47
Freight ac		94 28
Passenger ac		3 15
		51,505 90

Disbursements.

Foreign ticket balances	$14 06	
1st mortgage bond coupons	77 98	
Chicago & N. W. Railway Co., Mil. ac	2,210 59	
Bal., cash on hand	49,203 27	
		51,505 90

STATE OF WISCONSIN, *Milwaukee Co., ss:*

Hans Crocker, being duly sworn, deposes and says, that the foregoing is a true and accurate statement of his receipts and disbursements, as receiver of the La Crosse and Milwaukee railroad, for the month of February, 1864, according to his best knowledge, information, and belief.

H. CROCKER.

Subscribed and sworn to before me this 21st day of March, A. D. 1864.

W. L. HINSDALE,
Notary Public, Milw. Co., Wis.

145 And afterwards, to wit, on the 20th day of April, A. D. 1864, being the third day of the stated term of said court, begun and held at Milwaukee, in said district, on the third Monday—being the 18th day—of April, A. D. 1864, in said court, came the Milwaukee and Minnesota Railroad Company, and exhibited and filed its petition, as follows:

Circuit court of the United States for the 9th circuit and district of Wisconsin. In equity.

Petition of the Milwaukee and Minnesota R. R. Co.

CHARLES HOWARD
vs.
THE LA CROSSE AND MILWAUKEE RAILROAD COMPANY and SELAH CHAMERLAIN, defendants.
} Creditors' suit on judgment.

To the judges of the circuit court of the United States for the 9th circuit and district of Wisconsin—In equity:

Your petitioner, the Milwaukee and Minnosota Railroad Company, a corporation existing under the laws of the State of Wisconsin, humbly complaining, respectfully represents that the La Crosse and Milwaukee Railroad Company, one of the defendants in the above-entitled cause, was, from the 1st day of January, 1850, until the 21st day of May, A. D. 1860, a corporation existing under the laws of the State of Wisconsin, and that during that time its business affairs were managed by a board of directors; that about the 21st day of June, A. D. 1858, the said company was indebted to a large amount of floating debt, accumulated for rolling stock and materials furnished and provided, and labor performed for said company, which was unsecured upon the railroad or other property of said company; and that a large number of farmers along the line of said company's railroad had before then loaned their credit, in form of bonds and mortgages, to aid said company in the construction and equipment of its said railroad; which bonds and mortgages had been, before then, used by the said company, with a stipulation on its part, with and to said farmers, to pay the interest that might accrue thereon, and that a large sum of said interest which said company was bound to pay, as aforesaid, had become due, and the said company was unable to pay the same, and proceedings were threatened against such farmers to enforce payment of such interest; and that the said company, for the purpose of securing said indebtedness and said interest, and for other legitimate and necessary purposes, did, on or about the day and year last aforesaid, make, sign, seal, execute, and perfect, ready to be negotiated, sold, delivered, and transferred, in payment of said indebtedness of said company, and in payment of said interest, and to be used in and about the necessary and proper business of said company, one thousand bonds of one thousand dollars each, and fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, all dated that day and year, and payable in A. D. 1888, with interest at seven per cent., payable semi-annually on the 1st day of January and July in each year, with coupons for said interest to said bonds respectively attached; and that to secure the payment of said bonds, and thereby enable said company to use said bonds for the purposes aforesaid, the said company did, on the said 21st day of June, 1858, make, execute, sign, acknowledge, and perfect its mortgage or deed of trust in due form of law, and as it by law had authority to do, to William Barnes, to secure the payment of said last-named bonds and the interest thereon, in and by which said mortgage or deed of trust, said company mortgaged to said Barnes, trustee, for the purposes aforesaid, "all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, a part of which road had been constructed and was then in full operation, and the residue was then in process of construction, including all and singular the several tracts, pieces, or parcels of

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land which then were or thereafter might be, or constitute the site of the roadways, turn-outs, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which then constituted, or might thereafter constitute or be a part of or appertain to said railroad, whether then made or to be made thereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on, or appertaining to said railroad, whether then made or built or to be built and made thereafter; and all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which had then been or might thereafter be procured for or used on said railroad, and all the materials, tools, implements, utensils, and other personal property which had then been or might thereafter be procured for or used in connection with such railroad.

And also all and singular the rights, liberties, privileges, and franchises of said railroad to La Crosse, together with other property and things in said mortgage described; and that about the said 21st day of June, A. D. 1858, said mortgage was by said company duly and legally delivered to said William Barnes, trustee, and was by said trustee thereafter caused to be duly and legally recorded in the office of the secretary of state of the State of Wisconsin; and, as the plaintiff says, on information and belief, in the offices of the registers of deeds in the several counties through which said railroad passes and was then located.

147 That on the 11th day of August, A. D. 1858, the said company made, signed, sealed, and delivered to said Barnes, trustee, a certain indenture of supplemental mortgage or deed of trust, in and by which said company recited and affirmed the terms and conditions of said mortgage or deed of trust hereinbefore set forth, and dated June 21st, 1858, and did convey to said Barnes, as trustee as aforesaid, in addition to the things in said first mortgage conveyed, the following—that is to say, all and singular the rights, privileges, liberties, and franchises of said company of every kind and description; and also all lands granted or intended to be granted to said company, under and by virtue of the act of Congress, and the act of the legislature of the State of Wisconsin, in said supplementary mortgage mentioned, and also all the hereditaments and appurtenances belonging or in anywise appertaining to the lands and real estate therein conveyed or intended to be conveyed; and also all and singular the stock, railroad, or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands, and choses in action, of whatsoever nature which might be owned, or in which said company might have an interest on such day as such company might first make default in the payment of the interest or principal of any part thereof, which might thereafter become due on any of the said bonds issued or to be issued by said company, and to secure which said mortgage was given. That immediately thereafter, the said Barnes caused said supplementary mortgage to be recorded, as, in the same offices as the said first-named deed of trust or mortgage to said Barnes, was recorded as hereinbefore set forth; a copy of which said first mortgage or deed of trust, and a copy of which said supplementary mortgage or deed of trust to said Barnes, are attached hereto, and marked respectively exhibit No. 1 and exhibit No. 2.

That immediately thereafter said company commenced to deliver the said last-named bonds so secured as aforesaid, in payment of the indebtedness of said company, and for the other purposes contemplated by said company in the issue thereof, and in the necessary and proper business of said company, and that all of said bonds were sold, and delivered in payment, and transferred by said company for the purposes, and in the manner contemplated as aforesaid by said company, and that large numbers of said bonds were paid

and delivered to residents of the State of Wisconsin in payment of the indebtedness of such persons against said company for materials furnished to, and services rendered for said company, and that large numbers of said bonds are now held by such persons in the said State, or have been by them turned into the stock of the Milwaukee and Minnesota Railroad Company as hereinafter stated, and that a large number of said bonds have passed into circulation in the bond and stock markets of the United States, particularly in the city of New York, which are now held by *bona fide* purchasers and owners, or have by them been turned into the stock of the Milwaukee and Minnesota Railroad Company as hereinafter mentioned. That about the 1st of February, A. D. 1859, the said company having made default in the payment of, or part of, the interest due on said bonds secured as aforesaid; the said William Barnes in pursuance of the provisions of the laws of the State of Wisconsin, then in force in that behalf, and the provisions contained in said mortgages or deeds of trust, proceeded to the foreclosure of said mortgages by advertisement, and having previously given the notice required by law in that behalf; on the 21st of May, A. D. 1859, said William Barnes, trustee, sold at public auction, at the court-house, in the city and county of Milwaukee, in said State of Wisconsin, all property, rights, privileges, franchises, things in action, and other things in said mortgage and supplementary mortgage, to him said Barnes described; and the said William Barnes, trustee, then and there at said sale became the purchaser thereof according to the provisions of the laws of said State of Wisconsin, then in force in that behalf, at and for the sum of one million five hundred ninety-three thousand three hundred and thirty-three dollars and thirty-three cents, ($1,593,333 33;) no other person or body having made any bid whatever for the same, and that said mortgages thus became, and were thereby foreclosed according to the provisions of the laws of the State of Wisconsin in that behalf then in force. And that said Barnes, by virtue of said purchase, and the provision of the law of the State of Wisconsin then in force in that behalf, became the owner of the property and franchises and other things so purchased by him, and thereafter held the same in trust, and only in trust, for the holders of the then outstanding bonds secured by said mortgages.

And that, afterwards, to wit, on or about the 23d day of May, A. D. 1859, the owners and holders of a large majority of the said bonds, proceeded to organize anew, and then and there elected directors, and took the corporate name "Milwaukee and Minnesota Railroad Company," and said Barnes then and thereafter conveyed to said last-named company all the property and things by him purchased as aforesaid, and thereafter said company proceeded and conducted its business under and in pursuance of the charter of said La Crosse and Milwaukee Railroad Company, and thereby became and ever since have continued a corporation, under and by virtue of the laws of said State, capable of suing and being sued; and that said Milwaukee and Minnesota Railroad Company immediately thereafter entered into the possession of said property and franchises of said La Crosse and Milwaukee Railroad Company so far as the same were in possession of said La Crosse and Milwaukee Railroad Company at the time of said sale.

That said bondholders, at said new organization, elected and chose the following-named persons directors of said Milwaukee and Minnesota Railroad Company, viz:

Russell Sage, N. J. Emmons, Hans Crocker, Wm. E. Smith, Lemuel W. Weeks, W. B. Gilbert, William Gould, William R. Sill, and ——— Batter shall, and that said directors immediately thereafter organized the said board of directors by electing and choosing Russell Sage president, N. J. Emmons vice-president, and Dwight W. Keyes secretary, of said Milwaukee

and Minnesota Railroad Company; and that neither the La Crosse and Milwaukee Railroad Company nor any subsequent incumbrancer or incumbrancers, nor any other person or persons did, within one year after said sale, redeem or offer to redeem the property and things so sold under said mortgages or trust deeds, according to law in that behalf.

That by virtue of the said foreclosure of said deeds of trust or mortgages to said Barnes, as hereinbefore set forth, and the organization of said Milwaukee and Minnesota Railroad Company and conveyance by said Barnes, as hereinbefore set forth, and the said premises not having been redeemed, as hereinbefore stated, the said Milwaukee and Minnesota Railroad Company, from and after May 21, 1860, became, under and by the laws of the State of Wisconsin, the successor of the La Crosse and Milwaukee Railroad Company, as to all the property and things described in said deeds, and the owner of and clothed with all the rights, privileges, franchises, and property, real and personal, and things in action, and effects, of every nature and description, before then belonging to said La Crosse and Milwaukee Railroad Company, wherever situated and however circumstanced, subject only to such valid and legal liens and incumbrances thereon as were prior to said first deed to said Barnes; and that the said Milwaukee and Minnesota Railroad Company, being by law an incorporated company, composed of the creditors of the said La Crosse and Milwaukee Railroad Company, and purchasers at said foreclosure sale (in the manner hereinbefore stated) as corporators, has a legal right to object to, resist, and set aside all conveyances, negotiations, sales, transfers, leases, mortgages, or judgments which were or have been made or suffered by said La Crosse and Milwaukee Railroad Company, with intent to hinder, delay, or defraud its creditors; and has the right to object to, resist, and set aside every illegal, unjust, or fraudulent claim of any person or persons against the said La Crosse and Milwaukee Railroad Company, which is apparently a lien or incumbrance upon any of the property, rights, privileges, franchises, or other things whatsoever of said last-named company, which were embraced or described, or intended to be embraced or described, in either of said trust deeds to said Barnes, and now owned by said Milwaukee and Minnesota Railroad Company, as hereinbefore stated; and has the right to collect and enforce all actions and causes of action existing in favor of said La Crosse and Milwaukee Railroad Company, and conveyed by said trust deeds to said Barnes or either of them.

All the foregoing facts are stated upon information and belief.

148 That the judgment mentioned and described in the bill of complaint in the cause rendered by the district court of the United States for the district of Wisconsin, and to enforce payment of which the bill of complaint in this cause was exhibited, was rendered by said district court on the 28th day of November, A. D. 1859; that this petitioner is advised, and therefore shows, that said last-named judgment merged the said judgment rendered by the circuit court for the county of Milwaukee, in the State of Wisconsin; and that said judgment rendered in said district court never was a lien upon any of the property of the judgment debtor mentioned in the said mortgages to said Barnes, for the reason, among others, that the foreclosure of the said Barnes' mortgages and organization of the Milwaukee and Minnesota Railroad Company transferred the equity of redemption therein to the last-named company before the said judgment was rendered by the said district court, as stated in said bill of complaint in this cause.

Your petitioner further shows, that, on the 9th day of June, A. D. 1860, the district court of the United States for said district, in which this cause was then pending, made an order in this cause, appointing Hans Crocker receiver, which order is as follows, after the title of this cause as it then was, viz:

SEBRE HOWARD
vs.
LA CROSSE AND MILWAUKEE R. R. COMPANY AND SELAH CHAMBERLAIN.

JUNE 9TH, 1860.

This day came the parties, by their counsel and the rule of the complainant, for an injunction and for the appointment of a receiver, having been argued on the bills, records, and affidavits submitted, on consid-
149 eration whereof it is ordered by the court, that an injunction be, and hereby is, allowed, according to the prayer of the bill, until the further order of this court. And this day the motion and rule of the complainants for the appointment of a receiver came on to be heard, and was argued by Mr. Hubbell and Mr. Carpenter for the complainant, and Mr. Emmons for the defendant, Selah Chamberlain; the defendant, the La Crosse and Milwaukee Railroad Company, not appearing. On consideration whereof it is ordered by the court that Hans Crocker be, and he is hereby, appointed receiver of all the railroad extending from the city of Milwaukee to the city of La Crosse, in the State of Wisconsin, together with all the depots, depots buildings, tracks, side-tracks, engine-houses, buildings, fixtures, fences, locomotives, engines, cars, furniture, tools, rolling stock, rights, privileges, and franchises, and all the personal and real property belonging to the said railroad company, and belonging to, or used, or connected with, said line of road (subject, nevertheless, to a previous order of court appointing him, the said Hans Crocker, to be the receiver for the western portion of said road from Portage City to La Crosse), and be at once put into possession of the same and every part and parcel thereof.

And it is further ordered, that the said Hans Crocker, before entering upon his duties as such receiver, shall give a bond, with sureties to be approved by the judge of this court, in the penal sum of fifty thousand dollars, conditional, that he will duly manage and conduct said railroad and property, and for what he shall receive shall duly file inventories, and also file under oath every month accounts of his receipts and disbursements, according to the rules and practice and direction of this court.

And it is further ordered, that the defendants, and particularly the
150 defendant, Selah Chamberlain, deliver to the said Hans Crocker, as such receiver, all and singular the said railroad from Milwaukee to La Crosse, and all other the real estate and premises before mentioned, and all and singular the rolling-stock, locomotives, cars, machinery, tools, fixtures, money, furniture and appurtenances, and other personal property which belongs, or has been procured for or used in connection with said railroad, or any part thereof which may have come to the hands of the said defendants or over which they have control, and that such receiver take possession thereof, and take directly or by such agent as may be for that purpose by such receiver duly appointed, the care, possession, management, direction, and control of all such property, and all the income to be had and received from the running, possession, and operation or use of the said railroad and property in any wise, and out of the same pay the expenses of the said receivership and the costs and expenses of operating and maintaining or preserving and keeping said railroad and other property and premises to be received by him as aforesaid, and then hold the balance of such money and receipts subject to the further order of the court.

And it is further ordered, that the said receiver, and any other party in interest in this suit, have leave from time to time to apply to this court for such further directions in respect to such property, and the management and proceeds thereof, as may be just and may be required.

And same day bond of Hans Crocker, as receiver, approved and filed.

That afterwards, to wit, on or about the day of the date of said
151 order, the said Crocker executed a bond and entered into possession of the said railroad and other things mentioned and described in said order.

Your petitioner further represents, that it is now the owner of all the railroads from Milwaukee to Portage City, and franchises pertaining thereto, mentioned and included in said order; and of all the rolling-stock, franchises, and other property and things of which said Crocker was appointed receiver as aforesaid, except that part of said rolling-stock mentioned in, and ordered to be sold by, a certain decree in equity, made on the 13th day of January, A. D. 1862, by said district court, in a certain cause in equity wherein Greene C. Bronson, James T. Southe, and Shepherd Knapp were complainants, and the said La Crosse and Milwaukee Railroad Company and others were defendants, which said decree, or a certified copy thereof, your petitioner is ready to present to your honors, and prays that the same may be taken as part of this petition.

Your petitioner, therefore, prays your honors to make an order in this cause dismissing the receiver in this cause, or ordering him to release all claims to any of the property aforesaid, under or by virtue of said order appointing him said receiver in this cause, and that the said receiver be ordered to pay over to your petitioner any money in his hands, as receiver in this cause, arising or resulting from any of the property mentioned in said order appointing said receiver in this cause, or for such other or further relief as the nature of the case may require, or as shall be agreeable to equity and good conscience; and that the receiver be ordered to deliver possession of the railroad from Milwaukee to Portage City, and the rolling-stock and franchises to your petitioner, who is the owner thereof.

152 The Milwaukee and Minnesota Railroad Company:

By MAT. H. CARPENTER,
Its Solicitor.

{ Seal of the company. }

DISTRICT OF WISCONSIN, *ss:*

Alexander Fleming, being first duly sworn, on oath says, that he has heard read, and knows the contents of, the foregoing petition, and that the same is true, of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters, he believes it to be true. That the foregoing statements in relation to the said Barnes' mortgages and the foreclosure thereof, and the organization of the said Milwaukee and Minnesota Railroad Company stated in said petition on information and belief, are all matters of common and public notoriety, and matters of which this deponent has obtained knowledge, by examining the documents and other written evidences thereof, and that upon such information and belief, this deponent says that the said statements in said petition contained in that behalf are true. This deponent further says, that he is a director of said last-named company, and has for years had charge of all the litigation of said company, and now has such charge, and that he makes this verification on its behalf.

A. FLEMING.

Subscribed and sworn to before me, this 20th day of April, A. D. 1864.

A. SCOTT SLOAN,
Clerk Circuit Court U. S., Dist. Wisconsin.

[Stamp, 5 cents.]

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(Rec. 60XIII, D. T. 1863-7.)

154 EXHIBIT No. 1.—*Trust deed.*

This indenture, made the twenty-first day of June, in the year of our Lord eighteen hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee as hereinafter mentioned, party of the second part.

Whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, has determined to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants in the usual form attached, and which bonds will be substantially in the following form, to wit:

UNITED STATES OF AMERICA.

No. ..... STATE OF WISCONSIN. $.....

Know all men by these presents, That the La Crosse and Milwaukee Railroad Company, for value received, acknowledge itself indebted to the bearer thereof in the sum of ..... dollars, which sum it agrees to pay to the bearer hereof on the first day of July, in the year of our Lord one thousand eight hundred and eighty-eight, at the Albany Exchange Bank, in the city of Albany, with interest at the rate of seven per cent. per annum, payable at the Albany Exchange Bank, in the city of Albany, semi-annually, on the first day of January and the first day of July in each year, on presentation or delivery of the interest warrants or coupons hereto annexed. This is one of a series of bonds, all of the same tenor, making in the aggregate the sum of two millions of dollars, for securing the payment of which a trust deed has been executed by said company to William Barnes, of the city of Albany, and State of New York, conveying to him (subject to certain charges thereon) the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred miles, part of which road has been constructed, and is now in full operation, and the residue is in process of construction, together with the equipments and all other things pertaining, or which may hereafter pertain, to the road so conveyed, reference to which deed is hereby had and made for a more full description of its contents. And for further securing and providing for the payment of said bonds, the said deed of trust provides for the creation of a sinking fund, the first payment of $25,000 to which is to be made by said company to William Barnes, of Albany, the trustee named in said deed of trust, on the first day of July, eighteen hundred and sixty-one, and thereafter a like sum annually, with which sum, as from time to time paid, the said trustee is to purchase outstanding bonds secured by said deed of trust, as is more particularly specified in said deed of trust, to which reference is hereby made.

In witness whereof said railroad company has hereunto affixed its corporate seal, and caused the same to be signed by the president and secretary, this 21st day of June, in the year of our Lord one thousand eight hundred and fifty-eight.

....., *Secretary.* ....., *President.*

Registered and countersigned this ...., 185 .

....., *Trustee.*

And whereas said railroad company has determined to secure the payment of said bonds, with the interest thereon, in the manner herein provided:

Now, therefore, this indenture witnesseth, that said railroad company, in consideration of the premises and the sum of one dollar paid by said party of the second part, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto the said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, a part of which road has been constructed and is now in full operation, and the residue is in process of construction, including all and singular the several tracts, pieces or parcels of land which now are, or hereafter may be, or constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all the other lands and real estate which now constitute, or may hereafter constitute or be a part of or appertain to said railroad. And also all and singular the superstructure of said railroad, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroad, whether now built or made, or to be built or made hereafter. And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have already been or may hereafter be procured for or used on said railroad, and all the materials, tools, implements, and utensils and other personal property which have been or may hereafter be procured for or used in connexion with said railroad; and also all and singular the rights, liberties, and privileges, and franchises of said railroad company, so far as they relate to said railroad from Milwaukee to La Crosse.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal, of said railroad company to be acquired hereafter, as well as that which has been already acquired, together with all the rights,
155 liberties, privileges, and franchises of said railroad company, in respect to said railroad from Milwaukee to La Crosse, as fully and amply as the same might be conveyed, if said railroad had already been fully constructed and equipped, excepting, however, any lands which now do or hereafter may belong to said company under any grant from the United States or the State of Wisconsin; subject, nevertheless, to lines already existing upon the property and franchises above mentioned, as follows: To a first mortgage upon the eastern division of the said road, between Milwaukee and Portage City, to secure outstanding bonds of said company, to the amount of about nine hundred and twenty-two thousand dollars. Also bonds to the city of Milwaukee to the amount of three hundred and fourteen thousand dollars. Also to bonds secured by second mortgages on said eastern division, subject to the amount of one million dollars. Also subject to a mortgage of four million dollars, upon the line of said road from Portage City to La Crosse, and to a second mortgage of about two hundred thousand dollars on the road from Portage City to La Crosse, and from the junction near the village of Tomah, to the terminus of the road on the lakes or river St. Croix; to have and to hold all and singular the property, real and personal, with the hereditaments and appurtenances, and all and singular the rights, liberties, and franchises hereby conveyed, or intended to be conveyed, subject to the aforesaid mortgages, to the aforesaid party of the second part and his successor, and his heirs and assigns forever; in trust, nevertheless, and upon the trusts, terms, and conditions herein expressed.

First. Until default shall be made in the payment of said bonds, or some

of them, or the interest thereon, said railroad company shall be suffered and permitted to hold and enjoy the said railroad, with all the equipments and all other things appertaining to the same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case default for the space of 15 days shall be made on the payment of any of said interest warrants or coupons as they respectively fall due, or if default for the like period shall be made in the payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases it shall be lawful, and said trustee is hereby authorized in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon and take possession of all and singular the railroad and all the other property, real and personal, hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to sell all and singular said railroad and other property, with all the rights, liberties, privileges, and franchises of said railroad company in respect to said railroad, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company of, in, or to said property, rights, liberties, privileges, and franchises, and every part and parcel thereof.

But before any sale shall be made at auction, notice of such intended sale shall be published once in each week, for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee, and should any further notice be required by the laws of the State of Wisconsin, the same shall be given.

And in case default shall at any time be made in the payment of the interest on the bonds then outstanding, or in case default shall be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then, and in either of said cases, said trustee, on the written request of the holder or holders of bonds then outstanding to the amount, in the aggregate, of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee, and his successor, that said company will, from time to time during the continuance of the trust, make, execute, and cause to be duly recorded, and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may be either necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal equitable, as said railroad company now has, or may hereafter acquire, of, in, or to all and every part of the property hereby conveyed, or intended to be conveyed, together with the rights, liberties, privileges, and franchises aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to the conveyance, and will pay and discharge all taxes, charges, liens, and other burdens, which either exist, or may hereafter arise, or be imposed upon, the property hereby conveyed, or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. This trust extends only to such bonds as shall be registered and countersigned by the trustee; and when all of said bonds shall be satisfied

and discharged, the trust shall cease. The trust shall also cease at the end of six calendar months after the principal moneys shall fall due, as to all such bonds as shall not then have been presented for payment. And whenever the trust shall determine, and any moneys which may be due to the trustee shall be paid, the trustee will reconvey to said railroad company all the right, title, and interest of, in and to the trust property.

Sixth. Said railroad company will from time to time pay all costs, charges, expenses, and compensation of the trustee, in, about or for the execution of the trust, and will in all things keep him fully indemnified, and saved harmless of, from, and against all damages, costs, charges, and expenses which he may sustain, or be part to, in consequence of accepting this trust, or of anything which may be done or omitted under it, saving only such damages as may arise from the culpable act or neglect of the trustee.

Seventh. And the said railroad company agree to establish and provide a sinking fund for the gradual redemption and payment of said bonds, and for that purpose will pay to the said trustee, on the first day of July, eighteen hundred and sixty-one, and annually thereafter until this trust is closed, the sum of twenty-five thousand dollars, with such sum as from time to time the same shall be paid, the said trustee shall from time to time purchase outstanding bonds secured by this deed of trust, at the lowest price
156 he can purchase the same for, first giving ten days' public notice in one or more newspapers published in New York, Albany, and Milwaukee, respectively, of his desire to purchase so many of said bonds as can be obtained for the money of said sinking fund then in his hands, and all bonds so purchased belonging to said sinking fund shall be retained by said trustee until this trust be closed.

Eighth. The trustee is hereby authorized to appoint all such attorneys, counsellors, clerks, and other agents, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of such attorneys, counsellors, or other agents, unless chargeable with culpable negligence in their selection, nor shall the trustee be responsible for anything short of gross negligence, or wilful default in the discharge of any of his duties.

Ninth. All moneys which may be received by the trustee under trust, after deducting therefrom all costs, counsel fees, charges, and other expenses of the trustee, and his compensation for executing the trust, shall be applied to the payment of the bonds which may be issued under the trust, and the surplus, if any, shall be paid to said railroad company.

Tenth. The supreme court of the State of New York may remove the trustee on the application of the railroad company, reasonable notice being first given to said trustee. The trustee may resign his trust, and be thenceforward discharged from all further duty or obligation in relation thereto, provided such resignation, after reasonable notice to the president or secretary of said railroad company, shall be approved by said supreme court. And on the death, removal, or resignation of a trustee, said supreme court may appoint a new trustee, who shall thereupon acquire and have all the right, title, interest, and authority under the trust, and be subject to all duties and responsibilities under the same, as fully as though he had been the original trustee and had executed this deed.

Eleventh. Said trustee hereby accepts, and covenants and agrees to and with said railroad company faithfully to execute, said trust.

In witness whereof said railroad company has hereto affixed its corporate

[SEAL] seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

LA CROSSE AND MILWAUKEE RAILROAD COMPANY.
By N. P. STANTON,
President.
LOCKWOOD L. DOTY,
Secretary of the La Crosse and Milwaukee Railroad Company.
WILLIAM BARNES,
Trustee. [SEAL.]

Signed, sealed, executed, and delivered in our presence, as to the La Crosse and Milwaukee Railroad Company, by N. P. Stanton, president, and as to William Barnes the said trustee.

CLARK, B.,
J. C. CARY.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.

EDWARD P. WHALING,
P. M. JOHNSON.

STATE OF NEW YORK, *County of Albany.*

Be it remembered, that on this second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin to take the acknowledgment and proof of the execution of deeds, and other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions to be used or recorded in the State of Wisconsin, appeared Nehemiah P. Stanton, described in, and who executed, the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely for the purposes therein stated, and I certify that the said person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and seal official, at my office, No. seventy-one State street, in the city of Albany, the day and year first above written. [SEAL.]

Given under my hand and official seal the day and year above written.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF NEW YORK, *County of Albany, ss:*

Be it remembered, that on the second day of July, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissiner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds, or other con-

weyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in, and who executed, the above instrument of writing between him as one of the parties thereto, and the La Crosse and Milwaukee
157 Railroad Company the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated, and I certify that the person who made the said acknowledgment is personally known to me to be the individual described in, and who executed, the said instrument.

In testimony whereof I have hereunto set my hand and seal official, at my [SEAL.] office, No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered, that on this seventh day of July, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in, and who executed, the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely, and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof I have hereunto set my hand and affixed my notarial seal.

[SEAL.] E. MARINER,
Notary Public Milwaukee County, Wisconsin.

Recorded July 8th, 1858, at 8 o'clock a. m.

158 EXHIBIT No. 2.

Indenture made the eleventh day of August, one thousand eight hundred and fifty-eight, between the La Crosse and Milwaukee Railroad Company, a corporation created by the legislature of the State of Wisconsin, party of the first part, and William Barnes, of the city of Albany, and State of New York, trustee, as hereinafter mentioned, and under and by virtue of an indenture made by and between said corporation and said Barnes, on the twenty-first day of June, one thousand eight hundred and fifty-eight, party of the second part.

Whereas the Congress of the United States, by an act approved June 3d, 1856, entitled "An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State," did enact as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That there be, and is hereby, granted to the State of Wisconsin, for the purpose of aiding in the construc-

tion of a railroad from Madison or Columbus, by the way of Portage City, to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield; and also from Fond du Lac, on Lake Winnebago, northerly to the State line, every alternate section of land, designated by odd numbers, for six sections in width on each side of said roads, respectively. But in case it shall appear that the United States have, when the line or routes of said roads are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tier of sections above specified, as much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the right of pre-emption has attached as aforesaid, which land thus selected in lieu of those sold and which pre-emption has attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid, shall be held by the State of Wisconsin for the use and purpose aforesaid; *Provided*, That the lands to be so located shall in no case be farther than fifteen miles from the line of the roads in each case, and selected for and on account of said roads: *Provided, further*, That the lands hereby granted shall be exclusively applied in the construction of the road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever; *And provided, further*, That any and all lands reserved to the United States by any act of Congress, for the purpose of aiding in any object of internal improvement, or in any manner for any purpose whatever be, and the same are hereby, reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

Sec. 2. *And be it further enacted*, That the sections and parts of sections of land, which by such grant shall remain to the United States, within six miles on each side of said roads, shall not be sold for less than double the minimum price of the public lands, when sold, nor shall any of the said lands become subject to private entry until the same shall have been first offered at public sale at the increased price.

Sec. 3. *And be it further enacted*, That the said lands hereby granted to said State, shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other, and the said railroads shall be and remain public highways for the use of the government of the United States, free from toll or other charge upon the transportation of property or troops of the United States.

Sec. 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in the manner following, that is to say, that a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of road, respectively, may be sold, and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of either of said roads are completed, then another like quantity of land hereby granted may be sold, and so from time to time until said roads are completed; and if said roads are not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States.

Sec. 5. *And be it further enacted*, That the United States mail shall be transported over said road, under the direction of the Post Office Department,

at such price as Congress may by law direct; *Provided*, That until such price is fixed by law, the Postmaster General shall have the power to determine the same.

Approved June 3d, 1856.

And whereas the legislature of the State of Wisconsin subsequently passed an act, approved October 11th, 1856, which is in the following words: "An act to grant certain lands to the La Crosse and Milwaukee Railroad Company, and to execute the trust created by an act of Congress, entitled 'An act granting public lands to the State of Wisconsin, to aid in the construction of railroads in said State,' approved June 3d, 1856." The people of the State of Wisconsin, represented in senate and assembly, do enact, as follows:

SECTION 1. The La Crosse and Milwaukee Railroad Company is hereby authorized and empowered to survey, locate, construct, complete, and perpetually to have, use, maintain, and operate railroads, with one or more tracks or lines from the city of Madison, in the county of Dane, and from the village of Columbus, in the county of Columbia, on the most direct and feasible route, by the way of Portage City to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, and shall have, possess, exercise, and enjoy the same rights, privileges, functions, franchises, authority, and
159 immunities with reference to the said routes, or any railroad to be built thereon, as it now possesses and enjoys with reference to any route it is now authorized to occupy, or any railroad built, or to be built, thereon; and there is hereby conferred upon the La Crosse and Milwaukee Railroad Company all the power and authority contained in the charter of said company, and the acts amendatory thereof, for the purpose of carrying out the objects of this act, and of appropriating and applying the lands hereinafter in this act granted, or their proceeds, to aid in the construction of railroads by this act authorized to be built.

SEC. 2. The said roads shall be constructed on the most direct and feasible routes from Madison to Portage City, and from Columbus to Portage City, and simultaneously as nearly as practicable, and both of them shall be completed by the last day of December, A. D. 1858. And for the purpose of estimating and selecting lands granted by Congress, the city of Madison is hereby designated as the point of commencement of said road, and the whole of the railroad hereby authorized to be constructed shall be constructed by said La Crosse and Milwaukee Railroad Company within ten years from the 3d day June, 1856.

SEC. 3. The said La Crosse and Milwaukee Railroad Company shall never set up the defence of usury to any contract in any court whatsoever; it may purchase and own rails, chairs, spikes, engines, tenders, cars, and all other things necessary and useful for the construction or operation of a railroad, and sell the same, and shall also have power and authority to operate its said roads, or either of them, in connexion with any and all other railroads, which may cross, come up to, or connect with the said railroads, or either of them, upon such terms as shall be mutually agreed upon by and between the said companies; *Provided, however*, That the said La Crosse and Milwaukee Railroad Company, in making any such contract as last aforesaid, shall give no preference to one company over any other such company or companies as last above-mentioned, but all such companies shall be put upon the same equal terms; *And provided, also*, That if the said La Crosse and Milwaukee Railroad Company, and such other railroad company as may desire a running connexion with the same, shall at time not be able to agree upon the terms of such connexions, then, and in that case, either party may apply to the circuit court of the circuit in which such connexion may be sought, and the said circuit court shall appoint three commissioners, whose duty it shall be forth-

with to proceed to examine and adjust the terms on which the said connexion shall exist, and the said award of terms of connexion shall be filed in the office of the secretary of state, and shall be binding on both parties for the term of two years. Such application shall be on not less than ten days' notice in writing, to be given by the party making such application to the adverse party.

SEC. 4. For the purpose of aiding in the construction of the railroads, which by this act the said La Crosse and Milwaukee Railroad Company is authorized to construct, all the interest and estate, present or prospective, of this State, in or to any and all the lands granted by the government of the United States to the State of Wisconsin, for the purpose of aiding in the construction of a railroad from Madison or Columbus, by way of Portage City to the St. Croix river or lake, between townships twenty-five and thirty-one, and from thence to the west end of Lake Superior and to Bayfield, by virtue of an act of Congress, entitled "An act granting a portion of the public lands in the State of Wisconsin to aid in the construction of railroads," approved June 3d, 1856, together with all and singular the rights, privileges, and immunities conferred, or intended to be conferred, by the said act of Congress, are hereby granted to the said La Crosse and Milwaukee Railroad Company; *Provided*, That the said land shall be exclusively applied in the construction of that road for which it was granted and selected; and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever; *And provided, further*, That the title to said lands shall vest in the said La Crosse and Milwaukee Railroad Company in the manner following, that is to say, whenever twenty continuous miles of said road shall have been completed, so as to admit of running regular trains on the same, the governor of this State shall certify to the Secretary of the Interior the fact that such twenty continuous miles of such roads are completed as aforesaid, then the title to two hundred and forty sections of said lands shall vest in the La Crosse and Milwaukee Railroad Company; and when a second continuous twenty miles of said road shall have been completed, so as to admit of running regular trains of cars on the same, the governor shall certify as before, and thereupon a further quantity of one hundred and twenty sections of said land shall vest in said company, and so from time to time until said roads are completed, and it shall be the duty of the governor so to certify to the Secretary of the Interior whenever such twenty miles are completed so as to admit running regular trains of cars on the same; and the governor of the State shall in his official capacity, and on behalf of the State and under the great seal thereof, execute and deliver to the La Crosse and Milwaukee Railroad Company, whenever it shall by virtue of the provisions of this charter be entitled to any of said lands, a deed in fee simple of any and all the lands to which said company shall be entitled; *Provided*, That said company shall not sell any of said lands until twenty miles of said road shall be completed, so as to admit of running regular trains over the same, and so on, from time to time, so that the sales of lands by said company shall never exceed six sections of land for every mile of road so completed.

SEC. 5. The location and designation of the route and line of the said roads shall be made by the said La Crosse and Milwaukee Railroad Company, and the same shall from time to time, and as fast as practicable, be reported to the governor of the State. The selection of lands provided for in the act of Congress hereinbefore mentioned shall be made by such agents as may be appointed by the governor of the State. Such selection, as well as the survey, location, and completion of said roads, and the compensation of such agents, shall be at the cost and charge of said company, without charge of any kind upon the treasury of the State of Wisconsin. Said railroads, which

shall be constructed by the application of funds derived from the lands herein granted, shall be and remain public highways for the use of the government of the United States, free from any toll or other charge upon the transportation of property or troops of the United States, and the United States mail shall be transported over said roads under the direction of the Post Office Department, as provided in said act of Congress.

SEC. 6. In consideration of the grants, privileges, and franchises herein conferred upon the said La Crosse and Milwaukee Railroad Company, for the purposes aforesaid, the said company shall, on or before the first day of March in each year, pay into the treasury of the State such sum as it is by the existing laws of the State required to pay in place of taxes upon its road now constructed, or which it may hereafter construct, under the present charter, and in addition thereto it shall pay into the treasury of the State, on or before the first day of March in each year, four per centum on the gross earnings of said road, to be built by said company in pursuance of the power and authority conferred by this act, for the year ending on the last day of the preceding December, in place of taxes on that portion of its said railroad so to be constructed; and for the purpose of ascertaining the gross earnings aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the treasurer of this State, on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company, and for the purpose of ascertaining the truth of such affidavits and the correctness of such abstracts, full power is vested in the governor of this State, or any other person appointed, as may be by law prescribed, to examine the books and papers of said company, and to examine under oath the officers, agents, and employees of the said company and other persons, and if any person so examined by the governor, or other authorized person, shall knowingly or wilfully swear falsely concerning the matter aforesaid, every such person is hereby declared to have committed perjury; and for securing to the State the payment of the aforesaid per centum, it is hereby declared that the State shall have a lien upon the railroad of the said company, and upon all other property, estate, and effects of said company, whether real, personal, or mixed, and the lien hereby secured by the State shall take and have precedence of all demands, decrees, and judgments against the said company.

The first payment shall be made on the first day of March next, after fifty miles of said road shall be completed, and such payment shall be in lieu and in full of all claims of the State for the grant hereby made; and in consideration of such annual payment the said company shall be forever exempt from all assessments and taxes whatever by the State, or by any county, town, city, village, or other municipal authority in the State (except special taxes for the improvement of streets and sidewalks) upon all stock in the said La Crosse and Milwaukee Railroad Company, whether belonging to said company or to individuals, or any of its franchises or estate, real, personal, or mixed, held by said company, and necessary for the operation of said railroad, and said lands, granted by said act of Congress, and hereby authorized to be conveyed to the La Crosse and Milwaukee Railroad Company, shall be exempt from taxation under and by virtue of the laws of this State for the period of ten years after the passage of this act, unless sooner sold, conveyed, or leased by the said La Crosse and Milwaukee Railroad Company; and the State shall have a prior lien upon the road of said company, and all the appurtenances and stock thereof, for all dues that may accrue to the State from said corporation as herein provided, which lien of the State shall take precedence of all demands, judgments, or decrees against said corporation.

SEC. 7. Within five years after the title of such lands shall become vested in the said railroad company, the same, if any shall remain unsold, shall be offered for sale in limited qualities at fair prices, preference being given to actual settlers.

SEC. 8. The said La Crosse and Milwaukee Railroad Company shall have full power and authority to transport persons and property in boats, vessels, barges, or other watercraft, on any navigable water which any portion of their railroad may run to or connect with, and to receive and collect reasonable compensation for the same, and for that purpose may purchase or build and own such vessels, boats, barges, and other watercraft as it may require.

SEC. 9. The said La Crosse and Milwaukee Railroad Company shall be capable in law of taking and holding any lands granted by the government of the United States, or of this State, to aid in the construction of railroads, which shall be conveyed to said company by this act, or by deed, or by operation of law; and may also mortgage or pledge, or otherwise dispose of, all their right, title, claim, or demand of, in, or to any lands, or interest in lands granted to said company by this act, and in any other estate, real, personal, or mixed, of which they may be seized at the time of execution of such mortgage, or which they may acquire subsequent thereto, in such manner and on such terms as the directors may think proper.

SEC. 10. In case the La Crosse and Milwaukee Railroad Company shall construct the railroad which by this act it is authorized to construct, or any part of it, upon or over any route upon or over which any other railroad company is authorized to construct a railroad, and upon or over which it has previous to the passage of this act actually surveyed or located its line of railroad, it shall be the duty of the La Crosse and Milwaukee Railroad Company to settle with such railroad company, upon principles of justice and equity, for all its property and rights of property which the said La Crosse and Milwaukee Railroad Company shall take, injure, or destroy, and the latter company shall pay to any such company, whose property or rights of property shall be thus taken, injured, or destroyed, whatever the same is reasonably worth; such payment to be made in money, bonds, stock, or lands, or in other manner as said companies shall mutually agree. And if the said companies cannot mutually agree upon the amount of compensation to be made by the said La Crosse and Milwaukee Railroad Company to such other company for the property and rights of property which said La Crosse and Milwaukee Railroad Company shall so as aforesaid take, injure, and destroy, then, and in that case, each of said companies shall select a disinterested engineer, and the two engineers so selected shall choose a third person, and, in case they cannot agree upon such third person, the governor shall appoint such third person; and the three persons so selected shall constitute a board of commissioners, whose duty it
161 shall be to ascertain, determine, and award the amount of compensation which the said La Crosse and Milwaukee Railroad Company ought, in justice and equity, to make to such other railroad company for the property and rights of property which shall be so as aforesaid taken, injured, or destroyed.

SEC. 11. This act, and all grants herein contained, shall cease and be void, unless the said La Crosse and Milwaukee Railroad Company shall accept of the same within five days after the passage of this act; and such acceptance shall be by a resolution adopted by the directors of said company, a copy of which, duly certified by the secretary of said company, under its corporate seal, within said period of five days from the passage of this act, shall be deposited in the office of the secretary of state. And in case the said La Crosse and Milwaukee Railroad Company shall violate the provisions of this act, the legislature may repeal this act, and may revoke all and singular

the rights and franchises herein conferred, so far as the same has not been performed and fulfilled, and so far as the rights and privileges hereby granted have not become complete and absolute.

SEC. 12. All the property which the said La Crosse and Milwaukee Railroad Company is authorized to appropriate, take, possess, hold, use, or enjoy, by making payment thereof, as is in this act provided, is hereby declared to be taken for public use, so soon as the said company shall so appropriate, take, possess, hold, or use the same.

SEC. 13. The capital stock of the La Crosse and Milwaukee Railroad Company is hereby increased two million dollars over and above its present capital, and within three months after the passage of this act said company shall open books for subscription to such increased capital stock, after giving at least thirty days' notice thereof in two newspapers, one published in the city of Milwaukee, and one published in the city of Madison Such books shall be opened in the city of Milwaukee, and shall be kept open for not less than three days, and all persons shall be permitted to subscribe to said stock, on the payment to the treasurer of the company of five per cent. of the amount subscribed in cash; but no one person shall be allowed to subscribe for more than two hundred and fifty shares of such stock; and in case the number of shares subscribed shall exceed the amount of two million of dollars, the same shall be reduced to that amount, by deducting such sums as may be necessary pro rata from each of the several subscriptions, and all of the shares of stock so subscribed shall be subject to calls for instalments thereon in like manner as the other stock of said railroad company.

SEC. 14. It is hereby declared, that, in the judgment of the legislature of this State, the objects of the corporation named in this act cannot be attained under or by general laws.

SEC. 15. The La Crosse and Milwaukee Railroad Company shall fence its road in parcels, as it shall from time to time operate the same, within one year after it shall commence the operating of any and every such parcel, until the whole of such railroad shall be in a good, proper, and substantial manner fenced throughout the entire extent thereof.

SEC. 16 This act is hereby declared to be a public act, and the same shall immediately after the passage thereof be printed by the State printer, and when thus published shall take effect and be in force.

And whereas the said railroad company, after the passing of the last-mentioned act, and on the same day duly accepted the same by a resolution adopted by the directors of said company, a copy of which, certified by the secretary of said company under its corporate seal, was on the same day deposited in the office of the secretary of State;

And whereas the said railroad company, for the purpose of providing for and securing the payment of its floating debt, and for other purposes, had determined before the date of the indenture hereinafter mentioned, dated June 21, 1858, between said company of the first part, and said Barnes as trustee of the second part, to issue its bonds for a sum not exceeding two millions of dollars in the aggregate, embracing one thousand bonds of one thousand dollars each, fourteen hundred bonds of five hundred dollars each, and three thousand bonds of one hundred dollars each, with interest warrants or coupons in the usual form attached;

And whereas, also, the La Crosse and Milwaukee Railroad Company executed and delivered to said party of the second part an indenture, dated on the 21st day of June, A. D. 1858, recorded in the office of the secretary of state of the State of Wisconsin, on the 8th day of July, A. D. 1858, in book of railroad mortages, on pages 342, 343, 344, 345, 346, 347, 348, by which the said railroad company conveyed to said William Barnes, party of the second part, as trustee for the holders of said bonds as therein particularly

specified, all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200) miles, including all and singular the several tracts, pieces, or parcels of land which constituted or might thereafter constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all other lands which might thereafter constitute or be a part of or appertain to said railroad, and also other property, real and personal, and other rights, privileges, liberties, and franchises, as by reference thereto will more fully and at large appear;

And whereas, also, the said indenture contained a covenant and agreement on the part of the said La Crosse and Milwaukee Railroad Company, to make, execute, and deliver to said William Barnes, as trustee as aforesaid, all necessary and proper further conveyances and assurances;

And whereas the said trustee has required the execution and delivery of this further conveyance:

Now, therefore, this indenture witnesseth, that the said La Crosse and Milwaukee Railroad Company, in consideration of the premises, and of the mutual promises herein contained, and the sum of one dollar, paid by the said party of the second part to said party of the first part, the receipt of which is hereby confessed and acknowledged, has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the railroad of said company, commencing in the city of Milwaukee, and running from thence to La Crosse, a distance of about two hundred (200)
162 miles, and also the railroad of said company, commencing in the village of Madison and running from thence, by way of Portage City, to the St. Croix river or lake, a distance of about two hundred and sixty-eight (268) miles, and also the railroad of said company, commencing in the village of Columbus and running from thence to Portage City, a distance of about forty (40) miles, a part of which roads have been constructed and are now in full operation, and the residue are in process of construction; and all other railroads built or to be built and constructed by said company, or which they have a right to construct by or under any corporate or other rights, privileges, or franchises heretofore granted or given, or which may be hereafter granted or given to said La Crosse and Milwaukee R. R. Co. by the legislature of the State of Wisconsin, or from any other source, or in any other manner whatsoever, including all and singular the several tracts, pieces, or parcels of land which now are or hereafter may be or constitute the site of the roadways, turnouts, engine-houses, workshops, depots, and other buildings, and all other lands and real estate which now constitute or may hereafter constitute, or be a part of or appertain to said railroads, and including also all and singular the lots, lands, and real estate whatsoever which the said railroad company now own, or which they shall hereafter acquire by purchase, grant, gift, or otherwise, in the cities of Milwaukee and La Crosse, or in the vicinity of either of said cities, and all improvements made or to be made thereon, and all rights of dockage and wharfage, and all other riparian rights, privileges, and franchises appertaining thereto, for a particular description of which lands already acquired reference is made to the various deeds of the same to the said company.

And also all and singular the superstructure of said railroads, whether now made or to be made hereafter, and all the engine-houses, workshops, depots, and other buildings, and all the other improvements on or appertaining to said railroads, whether now built or made or to be built or made hereafter.

And also all and singular the locomotive engines and other rolling stock, and all the other equipments of every kind and description which have

already been or may hereafter be procured for or used on said railroads, and all the materials, tools, implements, and utensils, and other personal property which have been or may hereafter be procured for or used in connection with said railroads.

And also all and singular the rights, liberties, privileges, and franchises of said La Crosse and Milwaukee Railroad Company of every kind and description.

And also the said La Crosse and Milwaukee Railroad Company has granted, bargained, sold, conveyed, and confirmed, and does by these presents grant, bargain, sell, convey, and confirm unto said party of the second part all and singular the lands granted, or intended to be granted, to said railroad company under or by virtue of the act of Congress and the act of the legislature of the State of Wisconsin hereinbefore mentioned, together with all and singular the hereditaments and appurtenances belonging or in any wise appertaining to the lands and real estate hereby conveyed or intended to be conveyed.

And also all and singular the stock, railroad, or other bonds, bills of exchange, promissory notes, accounts, causes of action, demands and choses in action of whatsoever nature, which may be owned, or in which the said railroad company may have an interest, on such day as the said railroad company may first make default in the payment of the interest or principal, or any part thereof which may hereafter become due on any of the said bonds issued or to be issued to said company.

And it is hereby declared to be the intention of the parties to these presents to convey to and vest in said party of the second part all the property, real and personal and mixed, of said railroad company, to be acquired or vested hereafter, as well as that which has been already acquired or vested, together with all the rights, liberties, privileges, and franchises of said railroad company, as fully and amply as the same might be conveyed if said railroads had already been fully built, constructed, and equipped, and the particular lands granted by the foregoing acts of Congress and the said legislature had already been fully designated and duly conveyed and duly patented to said railroad company, according to the provisions of said acts.

And the said La Crosse and Milwaukee Railroad Company, party of the first part, does hereby covenant, grant, bargain, promise, and agree to and with the said party of the second part, and his successors, grantees, and assigns, to warrant and forever defend the above described and granted premises, lands, tenaments, and every part and parcel thereof, and also all the property, real, personal, and mixed, now vested or acquired, or hereafter to be vested or acquired, and also all the rights, property, real, personal, and mixed, choses in action, privileges and franchises above conveyed or intended to be conveyed, unto the said party of the second part, his successors, grantees, or assigns against the said party of the first part, and against all and every other person or persons, States or corporations lawfully claiming or to claim the same or any part thereof, subject, nevertheless, to all legal liens already existing upon the property and franchises above mentioned.

To have and to hold all and singular the said property, real, personal, and mixed, and choses in action, with the hereditaments and appurtenances, and all and singular the rights, liberties, privileges, and franchises hereby conveyed or intended to be conveyed, subject to the aforesaid existing legal liens, to the aforesaid party of the second part, and his successors and his heirs and assigns forever.

In trust, nevertheless, and upon the trusts, terms, and conditions herein expressed, and also expressed in the said indenture, made and executed by and between said parties, on the 21st day of June, A. D. 1858.

First. Until default shall be made in the payment of said bonds, or some of them, or in the payment of the interest thereon, or some part thereof, and the said railroad company shall be suffered and permitted to hold and enjoy said railroads, with all the equipments and all other things appertaining to same, and to use the same, and to take and receive the profits thereof to its own use, in the same manner as though this deed had not been made.

Second. In case of default for the space of fifteen days shall be made in the payment of any of said interest warrants or coupons, as they respectively fall due, or if default for the like period shall be made in the
163 payment at maturity of the principal sum of money mentioned in any of the said bonds, then and in either of said cases, it shall be lawful, and said trustee is hereby authorized, in his discretion, either in person or by his attorney or attorneys, agent or agents, to enter into and upon, and take possession of all and singular the railroads and all the other property, real, personal, and mixed, and choses in action hereinbefore conveyed, or intended to be conveyed, and to take and receive the income and profits thereof, and to take possession of all books, documents, maps, and papers relating thereto, and to sell all and singular said railroads and said other property, real, personal, and mixed, and choses in action, with all the rights, liberties, privileges, and franchises of said railroad company, either at public or private sale, and to execute and deliver to the purchaser or purchasers deeds and conveyances which shall vest in such purchaser or purchasers all the estate, right, title, and interest, whether legal or equitable, of said trustee and said railroad company, of, in, and to the said property, rights, liberties, privileges, and franchises, and every part and parcel thereof. But before any sale shall be made at auction, notice of such intended sale shall be published once in each week for three weeks at the least, in two newspapers published in the city of New York, and in a newspaper published in the city of Milwaukee; and should any further notice be required by the laws of the State of Wisconsin, the same shall be given. And in case default shall at any time be made in the payment of the interest money of the bonds then outstanding, or in case default be made in the payment of the principal sum of money mentioned in said bonds, or any of them, at maturity, then and in either of said cases said trustee, on the written request of the holder or holders of bonds then outstanding to the amount in the aggregate of one hundred thousand dollars, shall proceed to make such sales and conveyances so as above mentioned.

Third. Said railroad company covenants and agrees to and with said trustee and his successor, that said company will from time to time, during the continuance of the trust, make, execute, cause to be duly recorded and deliver to said trustee all such further conveyances and assurances, and will do all such further acts and things as may either be necessary or proper for more effectually vesting in said trustee all such right, title, interest, or estate, both legal and equitable, as said railroad company now has or may hereafter acquire of, in, or to all and every part of the property hereby conveyed or intended to be conveyed, together with the rights, liberties, privileges, and franchises, aforesaid.

Fourth. Said railroad company will cause this indenture to be duly recorded in all proper places, and will do whatever else may be necessary or proper to give full effect to this conveyance, and will pay and discharge all taxes, charges, liens, and other burdens which either exist or may hereafter arise or be imposed upon the property hereby conveyed or intended to be conveyed, and the trustee assumes no duty or responsibility on these subjects, or any of them, nor in relation to any other matter or thing, except as herein provided.

Fifth. The trustee is hereby authorized to appoint all such attorneys,

counsellors, clerks, and other agents in addition to those provided for in said original indenture, executed by and between said parties on the 21st day of June, 1858, and recorded as above mentioned, as he may deem proper in the execution of the trust, and shall not be answerable for the defaults or other misconduct of said attorneys, counsellors, clerks, or other agents, unless chargeable with culpable negligence in their appointment, nor shall the trustee be responsible for anything short of gross negligence or wilful default in the discharge or omission to discharge of any of his duties.

And it is hereby expressly declared, covenanted, and agreed by the said railroad company, that the provision herein contained for the security of said bonds are in addition to the provisions, liens, and securities made or created in that behalf in the said original deed of trust or mortgage, executed by and between said parties, bearing date June 21st, 1858, and recorded as aforesaid, and that all such original provisions, liens, and securities are to remain in full force and effect; and also that all provisions in said original deed of trust or mortgage for the benefit or protection of said trustee are to remain in full force and effect, and are to be applicable to all trusts and actions or omissions to act under this indenture, in the same manner as if all the provision thereof had been inserted and incorporated in said original trust deed or mortgage.

Said trustee hereby accepts and covenants and agrees to and with said railroad company faithfully to execute said trust.

In witness whereof said railroad company has hereto affixed its corporate seal, and caused the same to be subscribed by its president and secretary, and the trustee has subscribed his name and affixed his seal the day and year first above written.

{ [SEAL.] LA CROSSE AND MILWAUKEE R. R. COMPANY. }

LA CROSSE AND MILWAUKEE RAILROAD COMPANY,
By N. P. STANTON, *President.*
LOCKWOOD L. DOTY, *Secretary.*
WILLIAM BARNES, *Trustee.* [SEAL.]

Signed, sealed, executed, and delivered in our presence as to the La Crosse and Milwaukee Railroad Company, by N. P. Stanton, president.
BYRON KILBOURN.
T. W. BEAVER.

Signed, executed, and delivered in our presence, as to Lockwood L. Doty, secretary of said La Crosse and Milwaukee Railroad Company.
EDWARD P. WHALING.
T. W. BEAVER.

Signed, sealed, executed, and delivered in our presence, as to William Barnes, the said trustee.
JOHN G. WHITE.
ISAAC EDWARDS.

164 STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered that on this twenty-fourth day of August, eighteen hundred and fifty-eight, before me personally appeared Nehemiah P. Stanton, described in, and who executed the above instrument in writing as the president of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the said instrument as president as aforesaid, freely for the purposes therein stated, and I certify that the said person, who made the said acknowledgment, is personally known to me to

be the individual described in, and who executed the said instrument. And the said Nehemiah P. Stanton, being by me duly sworn, says that he is the president of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal
[SEAL.] official, at my office No. , Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Be it remembered that on this 24th day of August, eighteen hundred and fifty-eight, before me personally appeared Lockwood L. Doty, to me well and personally known to be the person described in, and who executed the above instrument in writing as secretary of and in behalf of the La Crosse and Milwaukee Railroad Company, and acknowledged that he executed the same freely and as the free act and deed of the said La Crosse and Milwaukee Railroad Company, for the uses and purposes therein mentioned, and the said Lockwood L. Doty, being by me duly sworn, says that he is the secretary of the La Crosse and Milwaukee Railroad Company, the above-named corporation, and that the seal affixed to the above instrument is the corporate seal of the said corporation, and that the said corporate seal and his signature were affixed to said instrument by the authority and direction of said corporation, and by order of the board of directors thereof.

In testimony whereof, I have hereunto set my hand and seal
[SEAL.] official, at my office No. , Third street, in the city of Milwaukee, the day and year above written.

Given under my hand and official seal the day and year above written.

EDWARD P. WHALING,
Notary Public, Milwaukee County, Wisconsin.

STATE OF NEW YORK,
County of Albany, ss:

Be it remembered that on the sixteenth day of August, in the year one thousand eight hundred and fifty-eight, before me, the subscriber, a commissioner in and for said State, appointed by the governor of the State of Wisconsin, to take the acknowledgment and proof of the execution of deeds or other conveyances or leases, and of any contract, letter of attorney, or other writing under seal or not, administer oaths, and take and certify depositions, to be used or recorded in the said State of Wisconsin, appeared William Barnes, described in and who executed the above instrument of writing between him, as one of the parties thereto, and the La Crosse and Milwaukee Railroad Company, the other party thereto, and the said William Barnes acknowledged that he executed the said instrument freely for the purposes therein stated; and I certify the said person who made the said acknowledgment is personally known to me to be the individual described in and who executed the said instrument.

In testimony whereof, I have hereunto set my hand and seal
[SEAL.] official, at my office No. seventy-one State street, in the city of Albany, the day and year first above written.

Given under my hand and official seal the day and year above written.

EDWARD WADE,
Commissioner of the State of Wisconsin in and for the State of New York.

Recorded Sept. 1st, 1858, at 8 o'clock a. m.

165 That afterwards, to wit, on the 28th day of April, A. D. 1864, of the stated term of said circuit court, begun and held at the court-room of said court on the third Monday of April, A. D. 1864, the following proceedings were had, that is to say:

Order vacating order of 12th June, 1863.

SEBRE HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and SELAH CHAMBERLAIN.

This day ordered by the court that the order of the 12th of June, 1863, modifying the order appointing the receiver, whereby the Milwaukee and St. Paul Railway Company were placed in possession of the eastern division of the road be, and the same is hereby, rescinded, and that the said Milwaukee and St. Paul Company return to the said receiver the said road and appurtenances, and rolling stock, received under said order, and all property relating to the said eastern division.

That afterwards, to wit, on the said 28th day of April, A. D. 1864, as yet of said term last aforesaid, the following proceedings were had, that is to say:

Petition of Mil. and Minn. R. R. Co. denied.

CHARLES HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and SELAH CHAMBERLAIN.

This day, the judges being divided in opinion as to the petition on the part of the Milwaukee and Minnesota Railroad Company filed this term, the same is denied.

That afterwards, to wit, on the 30th day of April, 1864, as yet of the term last aforesaid, the following proceedings were had, that is to say:

CHARLES HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and SELAH CHAMBERLAIN.

166 This day came the Milwaukee and Minnesota Railroad Company, by its counsel, and prayed an appeal to the Supreme Court of the United States from the order made by this court on the 28th instant, denying its petition for the discharge of the receiver, and that said receiver be ordered to deliver possession of the railroad from Milwaukee to Portage City, and rolling stock, and franchises, to said petitioner; whereupon it is ordered by this court that said appeal be allowed upon the said Milwaukee and Minnesota Railroad Company giving bond according to law.

That afterwards, to wit, on the 3d day of May, A. D. 1864, the said Milwaukee and Minnesota Railroad Company made and filed its bond to perfect its said appeal, which was duly approved, as follows:

Appeal bond of Mil. and Min. R. R. Co.

Circuit court of the United States for the 9th circuit and district of Wisconsin.

CHARLES HOWARD
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and SELAH CHAMBERLAIN.

Know all men by these presents, that the Milwaukee and Minnesota Railroad, as principal, and Austen Gunnison and Josiah A. Noonan, as surety,

are firmly held and bound unto Charles Howard, and unto the La Crosse and Milwaukee Railroad Company, and unto Selah Chamberlain, and to each and every of them, (protesting, however, that there is no such corporation now in existence as the La Crosse and Milwaukee Railroad Company,) in the just and full sum of five hundred dollars, lawful money of the United States, for the payment of which, well and truly to be made, we, and each and every of us, hereby bind ourselves, and our successors and representatives, firmly by these presents. Dated, signed and sealed, and delivered, this 30th day of April, A. D. 1864.

167 Provided, however, that the condition of this bond is such that whereas the Milwaukee and Minnesota Railroad Company has appealed to the Supreme Court of the United States from an order made by the circuit court of the United States for the 9th circuit and district of Wisconsin, in equity, in a certain cause pending in said court, and entitled Charles Howard, complainant, against the La Crosse and Milwaukee Railroad Company, and Selah Chamberlain, defendants, denying a petition of said Milwaukee and Minnesota Railroad Company for possession of the property held by a receiver in said cause, which said order denying said petition was made by said circuit court on the 28th day of April, A. D. 1864:

Now the condition of this obligation is such, that if the said Milwaukee and Minnesota Railroad Company shall prosecute their said appeal to effect, and answer all costs if they shall fail to make good their appeal, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

THE MILWAUKEE AND MINNESOTA
RAILROAD COMPANY. Its seal.
{ Seal of said Company. }
By DWIGHT W. KEYES,
Secretary of said Company.
AUSTEN GUNNISON. [SEAL.]
J. A. NOONAN. [SEAL.]

DISTRICT OF WISCONSIN, *ss:*

Austen Gunnison, being first duly sworn, on oath says, that he signed and sealed the foregoing obligation; that he is worth more than one thousand dollars over and above all liabilities and exemptions of property from forced sale on execution, and that he is a resident and freeholder in the State of Wisconsin.

AUSTEN GUNNISON.

Subscribed and sworn to before me this 30th day of April, A. D. 1864.
ELLIS WORTHINGTON,
Notary Public, Mil. Co., Wisconsin.

{ Five cent stamp. }

168 DISTRICT OF WISCONSIN, *ss:*

Josiah A. Noonan, being first duly sworn, on oath says, that he signed and sealed the foregoing bond; that he is a resident of, and freeholder in, the State of Wisconsin, and that he is worth one thousand dollars over and above all indebtedness and exemptions of property from forced sales on execution.

J. A. NOONAN.

Subscribed and sworn to before me this 30th day of April, 1864.
WILLIAM J. C. FORSTER,
Notary Public, Mil. Co., Wis.

{ Five cent stamp. }

I hereby approve this bond and the sureties thereto.
Dated May 3d, 1864.

A. G. MILLER, *District Judge.*

Filed May 3, 1864.

169 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

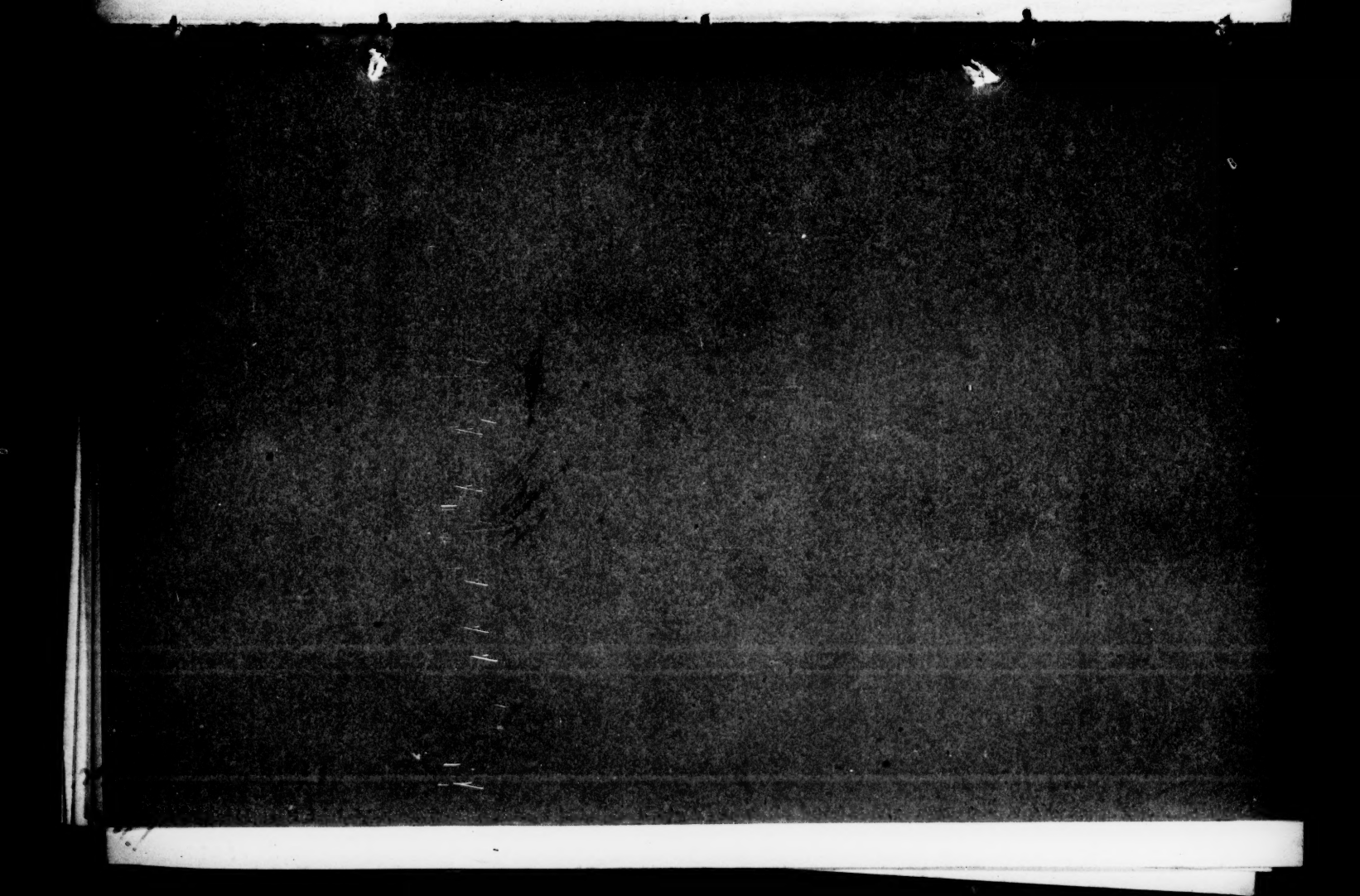
I, A. Scott Sloan, clerk of the circuit court of the United States of America for the 9th circuit and district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and that they are true copies of their respective originals now on file and remaining of record in my office, being a complete and perfect exemplification of the record and proceedings in the suit of Charles Howard against the La Crosse and Milwaukee Railroad Company and Selah Chamberlain.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in said district of [SEAL.] Wisconsin, this 7th day of May, A. D. 1864, and of the independence of the United States the eighty-eighth.

A. SCOTT SLOAN, *Clerk.*

Fees, $66 60.

Filed 14th May, 1864.



923

Supreme Court of the United States.

No. 149, December Term, 1865.

MILWAUKEE AND MINNESOTA RAILROAD CO.,

Appellant,

vs.

CHARLES HOWARD.

BRIEF FOR APPELLANT.

MATT. H. CARPENTER,

Counsel.

Starr & Son, Law Printers, Milwaukee.

Supreme Court of the United States.

No. 149, DECEMBER TERM 1865.

THE MILWAUKEE AND MINNESOTA RAILROAD COMPANY,

Appellant,

vs.

CHARLES HOWARD.

ABSTRACT OF RECORD.

January 5, 1860, Sebre Howard, exhibited in the District Court of the United States for the District of Wisconsin, in equity, a creditors bill against the La Crosse and Milwaukee Railroad Company and Selah Chamberlain, founded on a judgment rendered in said District Court against said Railroad Company on the 28th day of November 1859, for $16,358,04, cost 21,82.

June 9, 1860, the Court appointed a Receiver of the railroad from Milwaukee to Portage City ninety-five miles, with its rolling stock and franchises. R. p. 12.

June 13, 1860, bill taken as confessed against Railroad Company.

June 18, 1860, Chamberlain answered the bill. R. p. 12.

November 2, 1860, Replication to Chamberlain's answer filed. R. p. 44. October 6, 1862, Charles Howard substituted as complainant. R. p. 68. October 7, 1862, at special term of the Court, complainant filed in said cause a written agreement to dismiss the bill, for the discharge of the Receiver, and stipulating that the Milwaukee and Minnesota Railroad Company might at any time thereafter enter into possession of the property held by the Receiver, and on complainant's motion, bill was dismissed at the cost of the complainant. R. p. 69. At the next term, January 17, 1863, the Court made an order vacating the order dismissing the cause; but the stipulation for the discharge of the Receiver, and for the Minnesota Company to enter into possession of the property, continued on file, and was never withdrawn. R. p. 69.

January 20, 1863. Court ordered Receiver to pay to the complainant one thousand dollars.

April 20, 1864. The Milwaukee and Minnesota Railroad Company presented to the Court its petition duly verified showing to the Court that the LaCrosse and Milwaukee Railroad Company on the 21st day of June 1858, made its mortgage on all the property in the Receivers hands in this cause, to one William Barnes, to secure bonds to the amount of over one million dollars; that this mortgage was duly foreclosed May 21, 1859, and that said Barnes in pursuance of the laws of Wisconsin in that behalf became the purchaser of said property in trust for the bond holders, and afterwards in pursuance of law organized the Milwaukee and Minnesota Railroad Company, the petitioner, to take and operate said railroad, rolling stock, and franchises. That said petitioner was therefore the owner of all the said property in the Receivers hands; and that said judgment which was the foundation of the bill was never a lien upon said property, because the same passed to the petitioner on the foreclosure of the Barnes mortgage, before said judgment was rendered.

The petition prayed for the dismissal of the Receiver, the return of the property, or for such other relief as the petitioner was entitled to. R. p. 92 to 114.

April 30, 1864. The Judges of the Circuit Court on division of opinion denied the petition. R. 115.

The petition was heard in the Court below on its merits, without denial or issue, so that its averments of fact are be considered as admitted.

BRIEF.

The merits of this appeal are conclusively settled by the plain and express adjudications of this Court.

In Bronson vs. Railroad Company 2 Wallace, this Court held that this Howard judgment never was a lien on the property of the La Crosse Railroad Company, because the equity of redemption had passed to the Milwaukee and Minnesota Railroad Company on the foreclosore of the Barnes mortgage before the judgment was rendered.

The Court speaking of this very judgment, and one in favor of Graham and Scott, P. 304, say : "Now, it appears that each of these "judgments were recovered after the date of the third mortgage of the "La Crosse and Milwaukee Company, upon the foreclosure of which "the Milwaukee and Minnesota Company was formed. The liens of "these judgment were subsequent to this mortgage, and were cut off by "its foreclosure. Indeed, the judgment of Howard, of November 1859, "and the last judgment of Graham and Scott, which was recovered in "1860, never were liens upon any interest in the road of the La Crosse "and Milwaukee Company, the defendants in the judgments, as the "equity of redemption had all already passed to the purchaser under "the sale to Barnes in the foreclosure of the third mortgage, and afterwards became vested in the Milwaukee and Minnesota Company."

Both Howard and the Milwaukee and Minnesota Railroad Company were parties to this cause, so that this opinion is not only conclusive as an authority, but the whole matter was *res adjudicata* between Howard and the Company, in the strictest technical sense, at the time the petition was denied in the Court below. And in addition to this there was then on file the written stipulation of the complainant releasing the property from the Receiver's custody in favor of the Company. Therefore the Company was entitled to have its property released from the custody of the Receiver, who was holding the same without any right or authority as against the Company ; and the Company was entitled to an accounting as to to the fund in the Receivers hands.

II.

The only remedy of the Milwaukee and Minnesota Railroad Company was to apply to the Court which was holding its property by a receiver in favor of a judgment creditor, whose judgment was not a lien upon it:

and the company could not bring action or take any proceedings whatever against the Receiver, without committing a contempt of Court.

Wiswall vs. Samson, 14 How. 65.

III

Where the right of the person claiming the property is doubtful, and may be the subject of litigation as to matters of fact, the proper course is to apply to the Court by motion or petition, to have the plaintiff exibit interrogatories before a Master in order that the party applying may be examined as to his bills: "But where the right of the party has been " clear and undisputed, the Court has at once made the order in his be- " half, without either directing an examination *pro interesse suo*, or re- " ferring it to a master to enquire into the existence of the right."

2 Daniels Ch. Pr. p. 1271.

In Dixon vs. Smith 1, *Swanson* 457, Lord Eldon says;" In a clear " case the court will not send parties into the Masters office, merely " that they may return with their rights as plain as when they went. " The facts are not disputed; and a question of law is more fitly " discussed here than before the Master. The order must be made."

In Dickinson vs. Smith 4 *Mad.* 177 such application for relief directly by the Court was held correct in practice, though the motion was denied on its merits.

To the same effect is *Atty. General vs. Coventry* 1 *P. Wms.*, 308.

1 *Smith Ch. Pr.* 415, says "the general practice is to refer to Master, " unless the right of the third party is clear, in which case the Court " will make an order at once, and not send the party to the Master to " be examined, pro *interesse suo.*"

In the case at bar the facts were not only not disputed, but the right of the petitioner had been expressly *adjudicated by this Court.* The case was therefore proper for an immediate order by the Court, and not a case for reference to a Master.

IV.

The filing of the petition for release of the property in the proper case, is the commencement of a proceeding, and the only legal proceeding, to recover the property so held. Such petitioner thereby becomes a party to the cause, and is bound by the adjudication of the Court on his petition.

In Wiswell vs. Samson, 14 How. 68. This Court held that the proceedings in the State Court of Chancery by petition for the discharge of the Receiver, founded on a prior right to the property, were conclusive between the parties in the subsequent suit; and where such is the effect of an order or decree, the party aggrieved may always appeal. The decision in the court below in this petition is final as to the petitioner; and ends its connection with, and its interest in the cause in the Court below; it may therefore appeal, although no final decree has been rendered in the cause in the Court below *as to the original parties to the cause.*

Forgay v. Conrad, 6 How. 203.
Brewster v. Wakefield, 22 How. 128, 9.
Bronson v. Railroad Co., 2 Black. 529.

If a final decree as between the original parties to the cause were necessary to the right of the petitioner to appeal from the order which is final as to the petitioner's rights, it would be argued that the order of the Court at the October term, 1862, dismissing the complainant's bill, was final as to the original parties, (Record, p. 69;) and that the order of the Court at the subsequent term reinstating the cause was without jurisdiction and void.

Courts may reinstate causes which have been entered as dismissed by a clerical mistake, so held in The Palmyra, 12 Wheat. 1; Sibbald v. U. S., 12 Pet. 488; but after the Court has formally entered a decree dismissing the cause, and that on a written agreement filed by the complainant in the cause, and on the complainant's motion, and the term is passed; the Court has no further control over the case.

In Sibbald v. U. S., 12 Pet. 491, this Court says: "No principle "is better settled, or of more universal application, than that no Court "can reverse or annul its own final decrees or judgments, for errors of "fact or law, after the term in which they have been rendered, *unless* "*for clerical mistakes.*"

The order reinstating the cause recites that the cause was dismissed by mistake. But the whole record shows the reverse. The complainant filed an agreement to dismiss the cause, made motion to dismiss it, and it was dismissed by the Court at the complainant's cost.—Record, p. 68, 69, 70.

MATT. H. CARPENTER,
Counsel for Appellant.

Supreme Court of the United States.

No. 149.—December Term, 1865.

CHARLES HOWARD, Appellee,

vs.

MILWAUKEE AND MINNESOTA RAILROAD CO., Appellant.

BRIEF FOR APPELLEE.

This action was commenced by Sebre Howard, in the district court of the United States for the district of Wisconsin, against La Crosse and Milwaukee Railroad Company and Selah Chamberlain, on the 5th day of January, 1860, and is in the nature of a creditor's bill on a certain judgment or judgments in his favor against the La Crosse company. The bill of complaint sets out a judgment recovered by him against the La Crosse company in the district court of the United States for Wisconsin, on the 28th day of November, 1859, for $16,358 04 damages and $21 82 costs, execution duly issued thereon and return *nulla bona*.

The bill then sets out the lease made by the La Crosse company to Chamberlain, made September 26, 1857, to secure to said Chamberlain the amount then his due from the La Crosse company, giving a substantial copy thereof, by which Chamberlain was to retain the possession of said railroad and receive the revenue, income, and tolls thereof until fully paid. The bill also set out a judgment confessed

by said La Crosse company to said Chamberlain, on the 2d day of October, 1857, for the sum of $629,089 72, besides cost, as the amount his due for the security of the payment of which said lease was given. The bill then alleges that said lease and judgment were fraudulent as to creditors, and that Chamberlain entered into possession of said railroad and its appurtenances on the day of the date of said lease under the same.

That the complainant's debt, for which his said judgment was rendered, accrued long before the date of said lease, and that said Chamberlain, under said lease, had received a large amount of money. The bill of complaint further sets out that certain mortgages on said road were about to be foreclosed, which would extinguish the company's right and title to said road, and that complainant's only chance of payment was to secure the rents and income of the road until such foreclosure, and prays for a receiver, that Chamberlain's lease and judgment be declared fraudulent as to creditors. That he may account for all moneys received by him, and that he may be enjoined from setting up any rights under his said lease and judgment. That on the 9th day of June, 1860, the said district court, by an order entered in said cause, appointed Hans Crocker, Esq., receiver of said railroad, in pursuance of the prayer of said bill, and that he qualified as such receiver and took possession of said road on the 11th day of June, 1860. (Record, pp. 1 to 8.)

On the 18th of June Chamberlain answered said bill. (Record, p. 12.) Replication filed November 2, 1860. (Record, p. 44.)

On the 6th of October, 1862, the complainant's solicitor filed his affidavit in this cause, showing that the complainant, Sebre Howard, died in March, 1862, and that prior to his death he sold his said judgments and claims against said La Crosse company to the present complainant, Charles Howard, who was then the owner thereof, and on the same day said Charles Howard was substituted as complainant. (Record, pp. 67 and 68.)

On the 20th day of January, 1863, the complainant filed his petition, setting forth that the judgment particularly described in the bill of complaint was founded upon a judgment duly entered and docketed in the circuit court of Milwaukee county, in the State of Wisconsin, the first day of May, 1858, in favor of said Sebre Howard, plaintiff, against said La Crosse company, defendant, on which the sum of $15,466 89 remained due and unpaid, with interest

from the first day of May, 1858, and that both of said judgments are unreversed and in full force, and that said last-named judgment is a lien upon said railroad prior to any other judgment, and that said receiver's appointment, on this complaint, was prior to his appointment in any other case. (Record, p. 70.)

On the 20th day of April, 1864, the Milwaukee and Minnesota Railroad Company filed their petition in this cause, setting out the Barnes mortgage, bearing date June 21, 1858, its foreclosure, and their organization. (Record, pp. 92 to 95.) That, as it was advised, the said judgment of Sebre Howard of November 28, 1859, in the district court in said bill of complaint named, *merged* the said judgment in his favor in the circuit court of Milwaukee county, in the State of Wisconsin, of May 1, 1858, and that said judgment in the district court was never a lien upon the road by reason of the Barnes foreclosure. (Record, 95.)

Said petition then sets out at length the order of the district court appointing Hans Crocker, Esq., receiver, on the 9th day of June, 1860. (Record, 96 and 97.)

That said petitioner was then the owner of said railroad and appurtenances, of which said Crocker was appointed receiver, except that belonging to the western division, and prayed that "an order might be made dismissing the receiver in this cause, or ordering him to release all claims to any of the property aforesaid, under or by virtue of said order appointing him said receiver in this cause; and that the receiver be ordered to pay over to your said petitioner any money in his hands as receiver in this cause arising or resulting from any of the property mentioned in said order appointing said receiver in this cause, for such other or further relief as the nature of the case may require, or as shall be agreeable to equity and good conscience; and that said receiver be ordered to deliver possession of the railroad from Milwaukee to Portage City, and the rolling stock and franchises, to said petitioner as owner thereof. (Record, p. 97.)

On the 28th day of April, 1864, said petition was denied by the court. (Record, 115.)

From the order denying said petition this appeal is prosecuted by the Milwaukee and Minnesota Railroad Company.

I.

This appeal should be dismissed for want of jurisdiction, as not being from a final decree or judgment.

1st. The order denying the appellant's motion was not a final decree in any sense. It did not settle the right or ownership, or assume to do so. The property was in the custody of the court, and by its order it declined to part with that possession. It did not adjudge the property to any other person, or deny the appellant's ownership. It simply declined to release its own custody and control of the property at that time. It was a mere interlocutory order in the progress of a cause, the granting or refusing of which by the court was purely a matter of discretion, and cannot be reviewed as a final decree. It is an order of the same general nature as an order appointing or refusing to appoint a receiver, which is confessedly matter of discretion, and not appealable as a final decree.

2d. The appellant is in no more favorable position than it would have been as an original defendant in the suit. In that case it is conceded the appellant could not have appealed from the order appointing a receiver. Such a defendant might in the future progress of the cause make application to have the receiver discharged, or for the delivery of the property to him. Would an order granting or refusing such motion by a defendant be appealable? Certainly not; for it would manifestly be of the same general character as the order granting or refusing the appointment in the first instance, which is a matter clearly within the discretion of the court, and not appealable. Neither can this appellant, which was not an original defendant in the suit, make precisely the same motion, and treat its denial as a final decree from which an appeal may be taken. The appellant's right of appeal, in this case, is not other or different from what it would be, had it been named a defendant in the bill originally.

3d. Such orders, if erroneous, cannot be reviewed on appeal until after a final decree in the case. And the appeal must then be from the final decree, and not from such interlocutory order, but on the appeal from the final decree, the court will review all prior orders and proceedings in the cause, and if erroneous correct them.

Minnesota R. R. Co. *vs.* Soutter, &c., 2 Wallace.

To allow an appeal from such order will unnecessarily multiply appeals in the same suit. It is not yet known that an appeal will be necessary in this case. The property was not disposed of by this order, or the rights thereto settled. It still remains in the custody of the court. *Non constat*, but the final decree will acknowledge the alleged right of

the appellant, and direct the receiver to deliver the property in accordance with the prayer of the petitioner. The appeal is therefore premature, and should not be entertained by the court.

This very question was decided by this court, December term, 1863, in two cases of the Milwaukee and Minnesota Railroad Company *vs.* Soutter *et al.;* Nos. 267 and 268 of that term. The Minnesota company, in each of those cases, filed its petitions, one in the circuit, and the other in the district court in July, 1863, setting forth its right and title in precisely the same language as in this case, and asking the same relief. Those petitions were denied by said courts, respectively, on the 21st day of July, 1863. Appeals were taken in each case to this court by the Milwaukee and Minnesota Railroad Company, and were heard here in connection with the principal appeal December term, 1863. And on said hearing said appeals were dismissed not reported, for the reason that the orders were not appealable; and the court, in their opinion, (Nelson, Justice,) say:

"The order made (by the court below) is not the subject of an appeal. The removal or appointment of a receiver, which, in effect, was the object of the motions, rests in the sound discretion of the court, and the decision is not revisable here."

See Opinions Book, in office of Supreme Court, for December term, 1863, Nos. 267 and 268.

This appeal should therefore be dismissed.

II.

The appellant's motion was properly denied—

1st. Howard, a judgment creditor of the La Crosse company, filed his bill to enforce his judgment lien on the property of that company against the company and Selah Chamberlain, the party in the actual possession. The appellant was not in possession and never had been. The bill sought to set aside certain conveyances alleged to be fraudulent, and have said property subjected to his debt. On this bill a receiver of the property was appointed June 9, 1860. The defendant Chamberlain answered, (Record, p. 12,) to which the complainant replied. (Record, 44.) The receiver took possession of the property June 11, 1860, and had remained in possession for nearly four years, when this motion was made. The appellant's pretended right to this property accrued and become perfect, as it alleges, in May, 1859, more than a

year before the appointment of the receiver, and over five years before making this motion.

Such extraordinary delay in the appellant in asserting its right over this property was sufficient to cast suspicion on the claims of the appellants, and was a sufficient reason why the court should have declined to award the property to the appellant on his summary application.

2d. The record shows that this same receiver was holding this property by virtue of his appointments in other cases in which the appellant was a party, and on claims admitted to be superior to the pretended claim of the appellant. These appointments were made by this same court, and in disposing of this motion the court below took cognizance of that fact. He had been appointed in the case of Bronson and Soutter, and in the case of Bouton of this same property, besides his appointment in the land-grant case.

The appellant's application was that the receiver be discharged, and that the property be delivered to the appellant. The order asked was not proper until the other cases were also disposed of.

III.

A petition was not the proper mode of trying this question. The appellant should have made itself a defendant, and filed a cross-bill setting up its claims, so that Howard would have had an opportunity to contest it.

The foreclosure of the Barnes mortgage was made by a sale under the power in the mortgage, without the intervention of any court. The La Crosse company were not in possession of any part of the mortgaged premises when the mortgage was given to Barnes, and neither that company or the appellant had ever had possession of any portion of the premises.

That the right of the appellant can be thus disposed of, on petition *merely*, where there is no proper opportunity of contesting its right or legal existence, we entirely deny.

The most favorable view that can be taken of the appellant's rights is, that it stands in the place of the La Crosse company, and is entitled to claim possession of the mortgaged premises to the same extent that the La Crosse company could. Could that company make this claim successfully?

The receiver, Hans Crocker, was first appointed receiver of the premises in question by the district court of the United States, at the suit of Sebre Howard *vs.* La Crosse and Mil-

waukee Railroad Company and Selah Chamberlain, and took possession of the property as such receiver.

Howard's judgment in the State court against the La Crosse company was recovered on the first day of May, 1858, and became a lien prior to the Barnes mortgage. (Record, page 70; see also page 95.) This judgment was sued over in the Federal court, and judgment obtained there November 28, 1859, upon which his bill was founded; but the record discloses the original lien of his judgment. The receiver was appointed on this bill June 9, 1860, and took possession of the property June 11, 1860. (Record, pp. 96, 97.)

The appellant did not propose to pay Howard's judgment; therefore Howard was entitled to resist the discharge of the receiver.

The counsel insists that the Howard judgment was disposed of by the opinion of the court in number 132, December term, 1863. (Bronson, *et al.*, *vs.* La Crosse, 2 Wallace, 303–4.)

The opinion of this Court mentions the Howard judgment in the Federal court of November 28, 1859, as not being a lien at the foreclosure and sale under the Barnes mortgage.

The Court were then disposing of the case as made on the hearing in the court below, and on that hearing there was no proof that the State court judgment existed, and therefore could not be considered. It will be seen by reference to Justice Nelson's opinion, that his attention was not called to the State court judgment at all, and consequently that no opinion was expressed in regard to it.

But in this record, and for the purposes of this motion, this judgment does appear. It is in full force, and a lien prior to the Minnesota mortgage, and the record in the creditor's suit disclosing this fact, his rights must be determined as of that date.

Howard commenced his creditor's suit against the debtor and Chamberlain, the only party in possession of the property; and if the Minnesota company desire to assert its rights to the property, and have the receiver discharged, it can do so only by making itself a party defendant to Howard's bill, and filing a cross bill, so that Howard can have an opportunity of establishing his own rights, and contesting the pretences and claims of the Minnesota company. The idea that this Minnesota company, which has never had possession of the property, and never had its rights adjudicated or established, after Howard has had a receiver for over four years, can by a side motion of this character, without making

itself a party to the suit, or placing itself in a situation where its rights or the rights of Howard can be properly determined, take the property in question from the hands of the receiver, is preposterous. Howard claims that his judgment is a lien upon this property, and has taken the proper steps to enforce that lien, and have the property applied to its satisfaction, has made that lien effectual by having that property placed in the hands of a receiver; and if any party desires to contest his right, it must be done by a regular suit, and not by a summary process by which the rights of parties cannot be examined and determined.

2d. The counsel's doctrine, that the suing over of a judgment in another government or jurisdiction from that where the first is obtained is a *merger* of the first or original judgment, and that thereby the lien of the first judgment is destroyed, is a doctrine so entirely *new* and *original* to me, that I am unable to meet it by a serious argument.

Does the counsel mean to say, that if he has a judgment in Wisconsin, and sends a transcript thereof to Illinois and has it sued in that State, that thereby the judgment in Wisconsin is merged so that it can no longer be enforced? Is the real estate bound by his Wisconsin judgment thereby released? and should he issue execution upon it, could it not be enforced? I will not spend further time on such a proposition.

Lastly. The counsel says this judgment was only $20,000, and therefore a receivership should not be continued over millions of dollars' worth of property to protect such a judgment.

A judgment for $20,000 is just as sacred an obligation as one for twenty millions, and if this property, as he represents, was really worth millions, he could well afford to pay this comparatively small amount instead of riding over it. This court will do "equal and exact justice to the rich and poor," and no man must be turned out of court because his judgment is small. Since May, 1858, Howard has been using every exertion in his power to collect this small sum, and so far without success.

We therefore insist that the receiver could not be discharged, or the Minnesota company put in possession, against the rights of Howard.

JOHN W. CARY,
Of Counsel for Appellee.